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EXECUTIVE DOCUMENTS

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SENATE OF THE UNITED STATES

FOR THE

FIRST AND SECOND SESSIONS OF THE FORTY-FIFTH CONGRESS,

1877 AND '78.

IN FOUR VOLUMES.

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OF THE

SENATE OF THE UNITED STATES

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 36.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a resolution of the Senate of October 18, 1877, *information in relation to the removal of sunken wrecks in Pensacola Harbor, Florida.*

OCTOBER 25, 1877.—Referred to the Committee on Commerce.
MARCH 5, 1878.—Ordered to be printed.

WAR DEPARTMENT,
Washington City, October 22, 1877.

SIR: In response to the resolution of the Senate of the 18th instant, directing the Secretary of War "to communicate to the Senate his opinion in regard to the practicability and probable cost of removing the sunken wrecks at the entrance of the harbor of Pensacola, Fla.," I have the honor to transmit herewith a communication from the Chief of Engineers, of the 20th instant, and copies of reports on the subject from Capt. A. N. Damrell, Corps of Engineers, dated June 22 and July 24, 1877, respectively.

Very respectfully, your obedient servant,

GEO. W. McCRARY,
Secretary of War.

To the PRESIDENT OF THE SENATE,
Washington.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., October 20, 1877.

SIR: I have to acknowledge the reference to this office of the following resolution of the Senate of the United States, of the 18th instant.

That the Secretary of War be, and he is hereby, directed to communicate to the Senate his opinion in regard to the practicability and probable cost of removing the sunken wrecks at the entrance of the harbor of Pensacola, Fla.

In reply, I beg to submit the inclosed copies of reports on the subject from Capt. A. N. Damrell, Corps of Engineers, dated June 22 and July 24, 1877, respectively, from which it will be seen that the estimated cost of removing the wrecks in question is about $20,000. This estimate is, of course, only an approximate one, and may be increased or diminished upon further survey or examination of the locality. A survey of

the harbor of Pensacola is desirable, and could probably be made at a cost of about $2,000.

The resolution of the Senate is herewith returned.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

UNITED STATES ENGINEER'S OFFICE,
Mobile, Ala., June 23, 1877.

SIR: In reply to your letter of the 20th instant I have the honor of stating that I will submit an approximate estimate of the cost of removing the four wrecks in Pensacola Bay in a few days.

I have heretofore made my reports on this subject as concise as possible. I will now state more in detail my views.

Several changes have taken place in Pensacola Bay since 1863, as follows:

I. Norwegian bark Ferdinand burned and sunk near railroad-wharf in 1874, in 1½ fathoms of water.

II. A railroad-wharf, 1,600 feet long, was built in 1872, and there is a 600-foot branch to it now building. This wharf is near the eastern portion of Pensacola, and has 17 feet of water at its end. A large pier-head is being built near it, 450 feet square, and is now about 4 feet above high water.

III. Navy dry-dock was sunk in 1863, about 2½ miles west of Town Point, in from 14 to 17 feet of water. It was about 300 feet long and 100 feet wide, and some parts are now above water.

IV. A wharf 1,100 feet long was built near Woolsey in 1873, with 12 feet of water at its head.

V. The steamer Convoy, 450 tons burden, was sunk in 1864, nearly south of the light-house, in 11 feet of water, a portion of which projects above water.

VI. The English ship Wm. Miles, 900 tons burden, sunk in 1869, and lies in 10 feet of water, nearly west from Fort Pickens, on the Middle Ground.

VII. The Spanish ship Ada, 700 tons burden, was sunk in 1872, in 13 feet of water, near the Wm. Miles.

VIII. A pilot-boat was sunk in 1875, not far from the East Bank buoy, and now lies in about 13 feet of water, nearly south of Fort Pickens.

IX. A breach occurred in the beach near Fort McRea in 1868, establishing a communication between Pensacola Bay and the lagoon. This opening is still existing, but is a considerable distance to the north.

X. The beach has made out in the bend between Forts McKea and Barrancas from 300 to 400 feet, and washed away from 50 to 75 feet along the McRea and Water-battery beach. The point of Santa Rosa Island has made out toward the ship-channel west of Fort Pickens from 200 to 300 feet. The beach has made out from Fort Barrancas to Warrington wharf about 100 feet, and Town Point has washed away about 75 feet.

XI. The ship channel has shoaled some.

These wrecks, wharves, and beach changes were all to be examined and reported on, had my original estimate of $4,000 been approved, and I still think it should be done, and that the estimate is not too large.

Pensacola Harbor is an important one, and deserves a thorough study, and the expenditure which this study may prove necessary to restore to its former condition, as regards draught of water over the outer bar and its preservation.

I have some doubts as to whether the removal of the four wrecks will accomplish it fully without the closing of the opening into the lagoon, the removal of other wrecks, and some regulation as to location and length of wharves.

My statement that the Coast-Survey charts would furnish required data was an unfortunate one. I should have said that no complete survey was needed. There is no doubt that soundings should be taken over the whole bar, to show exactly what changes have taken place in the ship and swash channels and neighboring shoals, by comparison with Coast-Survey charts. The beach wherever changed should also be surveyed and mapped.

In conclusion, I think that an appropriation of $20,000 should be made as soon as possible for removal of wrecks and closing the opening into the lagoon and protection of the beach from any further breach.

Very respectfully, your obedient servant,

A. N. DAMRELL,
Captain Engineers, U. S. A.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Mobile, Ala., July 24, 1877.

GENERAL: As promised in my letter, of June 23, 1877, I have the honor of reporting that the cost of removing the four wrecks specified in Pensacola Bay, is approximately estimated by me, at $20,000 for the whole, and I would recommend an appropriation of this amount for the improvement of Pensacola Harbor.

As there were some inaccuracies regarding these wrecks in my letters of December 19, 1876, and June 23, 1877, I here give the list corrected according to my present information.

Class.	Name.	Tonnage.	Date of wreck.	Depth of water.	Remarks.
Ship	Wm. Miles	1,200	1869	12 feet	Iron fastened; well settled in the sand; considerably broken up; no value.
Bark	Ada	700	1872	13 feet	Iron and copper fastened; well settled in the sand; not much value.
Steamer	Convoy	375	1864	12 feet	Iron and copper fastened; well buried in the sand.
Pilot-boat	Nettle	34	1875	14 feet	Outside; well settled in the sand.

The positions are as stated heretofore.

Very respectfully, your obedient servant,

A. N. DAMRELL,
Captain Engineers, U. S. A.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 37.

LETTER

FROM

THE SECRETARY OF THE NAVY,

COMMUNICATING,

In answer to a Senate resolution of February 28, 1878, *information in relation to the conduct of the navigating officer of the United States steamer Huron at the time of its loss.*

MARCH 6, 1878.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, March 5, 1878.

SIR: I have the honor to acknowledge the receipt of an attested copy of a resolution passed by the Senate on the 28th ultimo, directing the Secretary of the Navy "to transmit to the Senate copies of any letters, documents, or statements in writing, relating to the conduct of the navigating officer of the United States steamer Huron at the time of its loss, other than those contained in the record of the court of inquiry in relation to the wreck of that steamer, heretofore transmitted to the Senate," and in compliance therewith to inclose the accompanying copy of a communication, dated the 8th of January last, received from Surgeon-General James C. Palmer, of the Navy, which is the only paper covered by the resolution on the files of the department.

I am, sir, very respectfully, your obedient servant,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States and President of the Senate.

WASHINGTON, *January* 8, 1878.

SIR: By your kind permission, I have had free access to the "record of proceedings of the court of inquiry on the loss of the United States steamer Huron," and I availed myself of that privilege to make a diligent analysis of the evidence. This impels me to solemnly invoke your judgment on the finding, by which a court of the highest prestige imputes criminal neglect of duty to Lieut. Lambert G. Palmer, who was navigator of the Huron.

First, I implore you to observe that the terrible loss of life by that shipwreck involved the commander, the executive officer, the navigator, and all but *two* of the watch-officers, which last were *the only experts*

whose testimony was available, and, *secondly*, it is to be remembered that the log-book, charts, and all other notes and records whatsoever were irretrievably lost with the ship. Only upon such evidence then as could be gathered or inferred from the recollections of the two watch-officers and other survivors less expert than they could the court base its deliberate finding and opinion, to wit:

1. The navigating officer is also responsible for not taking bearings of Currituck light after passing it and while it remained in sight, which, by showing the direction from a fixed point, would have established the Huron's proximity to land. It was his duty to take such bearings, even though not ordered to do so by the commanding officer.

Unquestionably it was; but does the evidence show that he did *not?*

2. The requirements of sounding and taking bearings seem to have been observed, except that no back-bearings appear [please note that word *appear* as plainly admitting the want of negative proof] to have been taken as has already been stated [not as so appearing, but as positively assumed], and the court does not consider that a seamanlike attention and precision were given to either the soundings or the bearings taken.

Again, please observe, sir, that it is a question of *fact* and *not in evidence* whether such attention and precision were indeed given or "not given," the loss of all charts rendered it impossible to know for certain whether the ship's place shown by soundings and bearings was plotted or not plotted.

3. It is the opinion of the court that with due caution and carefully taken and plotted bearings of Currituck light, the close proximity of the Huron to the coast would have been made manifest.

This opinion is not to be disputed, even if it were worth while to oppose any *opinion* to that of this high court, but, unhappily, it assumes facts not in the record, and ignores a settled rule of evidence, to wit:

Omnia præsumuntur rite et solemniter esse acta donec probitur in contrarium—"Everything is presumed to be rightly and duly performed until the contrary is shown" (Coke upon Littleton, 232, in Broom's Legal Maxims § 909), and again (l. c., 913) "It is a general rule that, where a person is required to do an act the not doing of which would make him guilty of a criminal neglect of duty, it shall be intended that he has duly performed it, unless the contrary be shown."

This presumption is rebutted by nothing in or out of the record; but there was no opportunity to support it by showing the uniform tenor of a life devoted to the minutest details of duty. Such a posthumous charge *presumes evidence not to be disproved*, though a contrary witness rose from the dead.

Permit me now to cite Navy Regulations, Section VI.—Navigator. The articles proper for this occasion are the following, to wit:

5. When the vessel is approaching land, * * * he will be attentive to the soundings, and at all times inform the commanding officer of any danger to which he may think the vessel exposed.

This commanding officer perished, he and his navigator, by successive waves. It is well known that their official communications were all the closer for a warm personal friendship. With them disappeared all evidence of obedience to this order. It is hardly to be imagined, however, that they did not, over and over again, compare their own observations; or, that they did not accept those of others, such as Mr. Conway's. But the sea closed over all they might have revealed.

ART. 17. He will keep a book in which he will make all calculations connected with the navigation of the vessel.

This book, if it had not been lost, might supply the evidence, now wholly wanting, of "seamanlike attention and precision," or of the contrary. As the case stands, it is to be presumed that the navigator did not

neglect a prescribed duty, and that the commander would not have excused him from it. Such a note-book would naturally be their guide on that eventful night. We may imagine them almost every instant pointing over the compass to that warning light. Who, indeed, can believe that, with official honor, or only their lives in jeopardy, they ever long took their eyes away from it? Who can now tell the conjectures, the doubts they interchanged about those bearings, distances, soundings, and deviations? The question may come up, "How could any man put his ship in such danger, if he noted the warning?" But Commander Ryan had noted it, and he told Mr. Conway that "that course ought to take the ship far enough out"; and, because he thought it would, he exclaimed to this witness, "My God, how did we get in here!" In the absence of proof to the contrary, it must be presumed that he was informed by the navigator of the varying bearings of Currituck light, as the ship's going five or six knots brought it more and more on the starboard quarter; and it is very improbable that Mr. Conway, who certainly took bearings after passing the light, never said a word about them, especially in the cabin, looking at the chart, at eight o'clock. Yet, because the ship was drawn into an unexpected danger, it seems to have been taken for granted that Commander Ryan had not been informed; or, more improbable still, that he himself had made no observations of the bearings of Currituck light, as it was passed abeam at half past six o'clock and on the starboard quarter at eight o'clock and farther astern at half past 10 p. m. Such dependence on others was not consistent with the character of Commander Ryan; and his surprise at the ship's swerving from her course is readily accounted for by the following testimony of Mr. Thomas S. Negus who, as an expert, was summoned from New York. This gentleman says: "I have recently heard that there have been unusually strong westerly currents in that vicinity." Having thus disposed of a negative inference, we may return to the direct testimony; and let me beg you, sir, to let that prove, as it does past all doubt, that, from first to last sight of Currituck light, the careful navigator did make, and diligently employ, the observations he is accused of neglecting. The chart is before us, and Master William P. Conway testifies as follows, viz:

> At 6 o'clock p. m. I went on watch. The ship was steering the above-mentioned course (south by east one-quarter east) and making six and a half knots. * * * Currituck light was then a half to a whole point forward of the starboard beam. It bore exactly on the beam at half past six o'clock, distant seven to eight miles. At a quarter before seven o'clock the lead was cast, and found about 14 fathoms. The quartermaster gave the soundings as 15 fathoms. Mr. Palmer, the navigator, asked me if the line was up and down. I answered, "a little off on the beam, and should allow about one fathom." * * * Mr. Palmer told me that this sounding agreed with the course and the bearing of Currituck light.

Here it first appears that the navigator confirmed the ship's place by bearings and soundings, and took a new departure from Currituck light, but of course that could be of no use without back-bearings taken after passing it. This observation, therefore, was an important duty. If he had neglected that, subsequent ones would have been of uncertain value, and it will presently appear that after the ship had struck he reasserted his attention to it in a conversation with Ensign Young. What did he want that bearing for, if not to employ it after passing?

Mr. Conway proceeds:

> I left the deck at eight o'clock, at the end of my watch. The ship was then going five and a half knots, and steering the same course. I went into the cabin at eight o'clock and saw the chart on the table and Commander Ryan standing by. I looked at the charts, and Commander Ryan remarked that that course ought to take the ship far enough out, and said he was afraid if he steered farther out he would get into the

Gulf stream as he had done last fall in going to Port Royal. He spoke of not turning in till he made Hatteras light or daylight, and afterward he said he thought the safest plan would be to put her head off shore and turn in. I remarked that he would not be able to sleep if he did put her head off shore, as there was a heavy sea running and we should be running into it.

All this time there was no anxiety and the question of putting the ship's head off shore related not to safety so much as getting some sleep. This feeling of security was based upon the assurance of having made the course good, and that, in the absence of other evidence, presumes that it was properly laid down on the chart they were looking at, a circumstance to which we shall refer by and by.

"After that," continues Mr. Conway, "I went below and was on deck again about half past ten o'clock, and Currituck light was then about one or two points on the starboard quarter," [which was too sharp to be any further useful], "just visible as the ship rose on the waves. I then went below and turned in. I was awoke by a heavy shock. I went aft and asked the captain if we should cut away the masts, as was suggested to me by the bootswain's mate. He said "Yes," &c. [Time as given by Mr. French about one quarter to two o'clock], * * * there was a report that there were two rocks ahead. The captain asked me, "Where?" I told him "ashore ahead of the ship," and he went to the gangway and asked where the ship was. I showed him, and he said, "My God, how did we get in here?" Some officer and others standing round said it was the shore; that there was smooth water inside the reef. It was thick, the spray flying so that we could not see clearly.

December 6, William P. Conway recalled:

Thirteenth question by the court. To what cause do you now attribute the loss of the Huron?—Answer. To a current or set of the sea, that put the ship in toward the shore; and also to the thick weather, that prevented our seeing the lights.

It will hereafter appear in evidence (the navigator's report, by Ensign Young), that up to 10.30 p. m., the ship "had not drifted much"; and the chart, hereto attached, carefully plotted, shows that, after Currituck light had ceased to be available, she seems to have been seized by the "unusually strong westerly currents" mentioned by Mr. Negus. Such a current was indicated by the northerly drift of the dead bodies of men washed from the Huron, a painful demonstration of the true cause of the disaster.

Twenty-second question by the court. Do you know whether bearings to Currituck light and assumed distances from it were used to plot the place of the vessel?

It was not his duty to know, and the only persons who could answer positively had perished; but Mr. Conway's belief must have had some foundation, and we have seen that he had looked at the chart on the cabin table, in his conversation with Commander Ryan. Like a conscientious witness he carefully answers: "I do not positively know, but I think they were." Surely, when nothing to the contrary appears, this presumption is in favor of the navigator.

Next appears another intelligent witness; and I beg you to observe that his report of a conversation with the navigator is continuous, though it appears that he (the latter) spoke disjointedly and at intervals.

Ensign Lucien Young:

I had the watch from 12 noon to four o'clock p. m. (November 23.) The navigator, Lieutenant Palmer, gave me instructions to inform him when Cape Henry light bore west by south. At 1.25 o'clock Cape Henry light was on that bearing, distant about five to seven miles [assumed]. Put over two patent logs. Course, south by east $\frac{3}{4}$ east. Lieutenant Palmer, when he set the course [ordered by the commander], told me there was a buoy on a wreck exactly on our course [this buoy is put down by the Hydrographical Office, on the Coast-Survey chart, and it ascertains the Huron's true course],

Cape Henry Light

Buoy, assumed

Buoy; Hydrographical Office position.

"I have run the course through the buoy — S.S.E. ¼ E." (Ens. Young.)

"The course was S. by E. ¼ E. a half-point Westerly of local deviation. (Master Conway.) = S.S.E. ¼ E.

6 P.M.

6.30 "

8 P.M.

Up to this, no apparent drift; the Light being, at 10.30 P.M, "just visible, as the ship rose on the waves."

Where she ought to have been, but for current N.W. by W½ W. point leeway

Kitty Hawk bay

Kitty Hawk

Nov 24, 1871

Huron 7.15 a.m.

as the dead bodies drifted, on line C.

abont ten miles off. We passed this buoy about two hundred yards to windward of it, about 3.10 o'clock. Lieutenant Palmer told me that the logging and course were exactly right by the chart. * * * * * * At 12, midnight, I was awaked by the quartermaster's calling Mr. French, who asked him the state of the weather. The answer was "bad."

After that, when the ship had grounded, the witness went into the cabin to "burn signals." Now he goes on:

Lieutenant Palmer was in there with me most of the time, and while there went three or four times to look at the barometer.

Please note that, at some intervals out of "most of the time," Lieutenant Palmer was out of the cabin, and at others he had gone outside the "water-closet," where the signals were burned, "to look at the barometer." And now: "I asked him where we had struck. He said he did not know; knew we were three or four miles below 'Kitty Hawk,' and I asked him what distance we were from shore. He said he thought we could not be inside eight or nine miles, and" [observe how utterly disconnected] "told me he had taken bearings of Currituck light as he ran by, and" [another break, jumping a period of about seven hours] "he was on the quarter-deck, I think [mind, not sure]; "when the Huron struck." The witness was throwing up rockets, and, as he afterward said, "the seas all this time were breaking all over the ship." The navigator, though "most of the time" in the cabin, was sometimes outside, or noting the barometer. Both were trying to keep their feet—probably listening for every sound—the one (navigator) dropping the thread of what he was telling, and Mr. Young imperfectly hearing, through the crash, yet he reports Lieutenant Palmer as saying:

That when he left Currituck light, he had 14½ to 15 fathoms sounding, which, with the bearings [bearings of what but that very light?] put him exactly where the course ought to put her, and that he knew from that that we had not drifted much, and that he had the course [coast] lead (25-pound lead) going every hour, and I think at one-half hour, 11½ or 12½ [o'clock], after we *lost* Currituck light, which we *lost* between half-past ten and eleven o'clock; that he got bottom from 14½ to 15, and at one o'clock, in 13 fathoms, and that she struck ten to fifteen minutes afterward. We both went and looked at the chart, and he pointed and said, "We are about off there."

The account here given, out of the navigator's mouth, in broken passages, as well as the witness could recall them, proves that while Currituck light "remained in sight," the navigator was constantly taking bearings and keeping the lead going. Moreover, Cadet-Engineer Edgar J. Warburton testifies that during his watch, from eight p. m. till midnight, the engines were stopped three times for soundings; once between nine and ten o'clock, again about eleven, and a third time about two minutes before twelve o'clock.

Now, let us take the chart (No. V, Coast Survey) in evidence of the navigator's observations.

According to Mr. Young's course, "SSE. ¼ E. through the buoy" [if he assumed that object to be on the very spot where the Hydrographic Office lays it down], the sounding, on his line traced before the court, read right and left from 6.30 p. m. as follows: 11, 14, 12, 13, 11, 12, 13½, 14½, 13, 13, and, at 10.30 p. m., exactly 14 fathoms. At this point the navigator is supposed to have "left Currituck light"; here it ceased to be any longer available, and because it then "put him" [put the place his observations ascertained] exactly where the course ought to put her, he knew she "had not drifted much." How could he judge whether she had or had not drifted by only one bearing "as he ran by," or unless he compared that with others, up to 10.30 p. m., when the light was "just visible"? It is not merely a just inference, but an unavoidable conclusion that he took bearings of that light to the last.

Here, sir, I rest the defense of this young officer, and appeal to your critical judgment and the justice of his countrymen against the first and last censure ever cast upon him. All charges derive importance from the authority of their source, and these have gone out to the world under the high prestige of a most distinguished court. Private character has little to oppose to such a far-ruling influence, and sympathy, either for the dead or those who lament him, has no place in this inquiry. We ask no more than a careful comparison of the evidence with the finding of the court; and, as the latter has been made public, I beg that the whole record, with this letter attached, may, in turn, be exposed to public comment.

I have the honor to be, very respectfully, your obedient servant,

JAS. C. PALMER,
Surgeon-General United States Navy.

Hon. R. W. THOMPSON,
Secretary of the Navy.

45TH CONGRESS, 2d Session. } SENATE. { Ex. Doc. No. 38.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING,

In answer to a Senate resolution of February 18, 1878, *a report of Maj. C. R. Suter, Corps of Engineers, on the condition of the work for removing a bar in the Arkansas River near Fort Smith.*

MARCH 11, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, March 7, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in response to the resolution of the Senate dated February 18, 1878, copy of report of Maj. C. R. Suter, Corps of Engineers, on the condition of the work for removing a bar in the Arkansas River near Fort Smith, Ark., with letter of the Chief of Engineers submitting the same.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *pro tempore*
of the United States Senate.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., March 6, 1878.

SIR: In compliance with the resolution of the Senate of the United States of February 18, 1878, referred to this office for report—"That the Secretary of War be requested to make report to the Senate of the condition of the work for removing a certain bar in the Arkansas River near the city of Fort Smith, Ark.; whether any further appropriation is needed to successfully complete the same, and, if so, what amount"—I beg leave to submit the inclosed copy of a report from Maj. Charles R. Suter, Corps of Engineers, the officer in charge of the work, which will furnish the desired information.

It will be observed that Major Suter estimates that an appropriation of $10,000 will be required to complete the work, and suggests that this sum be made available at once, in order that no delay may occur in its prosecution to completion.

The resolution of the Senate is herewith respectfully returned.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brig. Gen. and Chief of Engineers.

Hon. GEO. W. McCRARY,
Secretary of War.

REMOVAL OF A BAR IN THE ARKANSAS RIVER NEAR FORT SMITH, ARKANSAS.

UNITED STATES ENGINEER OFFICE,
Saint Louis, Mo., February 28, 1878.

GENERAL: In accordance with the instructions conveyed by your letter of February 19, 1878, I have the honor to submit the following report upon "the condition of the work for removing a certain bar in the Arkansas River, near the city of Fort Smith, Ark.":

The work here consists of a brush and stone dike, built substantially in conformity with the plan submitted for your approval under date of August 15, 1877.

This dike is partly completed throughout its whole length of 1,800 feet. About 800 feet in length is raised to a height of five feet above low water; the remaining portion is only two feet above the same level. The success obtained with the work in its present incomplete state has been very gratifying.

Previous to the commencement of our operations, the river above the mouth of the Poteau was divided into two channels by a large sand-bar. The main body of water went down the left bank, leaving only a narrow, shallow channel on the Fort Smith side. As the result of our work, the head of this sand-bar has been washed away as far as our dike has been built, and the crossing from the right bank to the left-hand channel is now nearly down to the city landing. To reach this landing is the object desired, and it is thought that it can be accomplished by raising the dike throughout its length to a uniform height of five feet above low-water mark and by extending it 300 feet farther down stream. To insure its permanence it is also necessary that the dike should be strengthened throughout its length, the present cross-section having been kept small in order to extend the work as far as possible with the funds available.

To complete the work an appropriation of $10,000 will be needed. It should be made available at once, in order that no delay may occur in prosecuting the work to completion.

I am, general, very respectfully, your obedient servant,

CHAS. R. SUTER,
Major of Engineers.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, United States Army.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 39.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

IN ANSWER TO

A Senate resolution of March 4, 1878, transmitting information in relation to the amount of money necessary to enable the government to coin gold and silver at the United States mint in Denver.

MARCH 11, 1878.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

TREASURY DEPARTMENT,
March 7, 1878.

SIR: In response to the resolution of the Senate of date the 4th instant, I have the honor to inclose a copy of a letter from the Director of the Mint, giving the information desired.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. W. A. WHEELER,
President of the Senate.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., March 7, 1878.

SIR: I have the honor to acknowledge the reference to this office of the following resolution of the Senate of the 4th instant:

Resolved, That the Secretary of the Treasury be directed to transmit to the Senate an estimate of the amount of money necessary to be appropriated to enable the government to coin both gold and silver at the United States mint in the city of Denver, in the State of Colorado, as well as the time that will be required to put said mint in condition to coin gold and silver.

The building at Denver occupied as an assay office is neither of strength nor capacity sufficient for coinage purposes, and if coining facilities are to be provided for in that city it will be necessary to erect a new building.

I may add, in connection with this subject, that the present building is insecure, from the settling of the foundations and cracking of the walls, even for its present purposes.

With the aid of the Supervising Architect of the Treasury Department I have made an estimate of the probable cost of constructing a mint at Denver of moderate capacity, for the coinage of both gold and silver, to be built of brick, and I have also made an estimate of the cost of equipping the same, which are as follows:

Estimated cost of building	$250,000
Estimated cost of equipment	100,000
Total	350,000

This does not include the value of ground upon which to erect the building.

The Senate resolution is herewith returned.

Very respectfully,

H. R. LINDERMAN,
Director.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 40.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

TRANSMITTING,

In answer to a Senate resolution of February 28, 1878, information in relation to the securities taken by the Union Pacific Railroad Company for aid afforded to the Colorado Central and other railroads.

FEBRUARY 11, 1878.—Ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 7, 1878.

SIR: Pursuant to Senate resolution of the 28th ultimo, directing me to inquire of the government directors of the Union Pacific Railroad Company concerning securities taken by said company for aid afforded to the Colorado Central and other railroads, &c., I have the honor to transmit herewith copy of report on the subject by said directors, through their chairman, Hon. James F. Wilson.

Very respectfully,

C. SCHURZ, *Secretary.*

Hon. W. A. WHEELER,
Vice-President and President of the Senate.

WASHINGTON, D. C., *March 6, 1878.*

SIR: Your communication of the 1st instant, addressed to the government directors of the Union Pacific Railroad Company, has had their consideration, and they respectfully submit the following reply thereto:

The preamble and resolution adopted by the Senate of the United States, and inclosed in your said communication, are here quoted for the purpose of rendering the answer thereto connected and more satisfactory than it could be otherwise made. The preample and resolution are as follows, viz:

Whereas it appears from the report of the government directors of the Union Pacific Railroad Company for the year 1877, communicated to the Senate on the 25th day of October, 1877, by the Secretary of the Interior, that—

The Colorado Central Railroad has been aided to the extent of.....	$1,610,497 86
Credit secured by the Union Pacific Railroad Company.....	767,156 20
Balance without interest.....	843,341 66

And that other investments have been made by the Union Pacific Railroad Company in several other railroads; the items and amounts are not stated in said report;

And whereas such information is necessary in order to understand what has been the management and what is the present financial condition of said company: Therefore,

Be it resolved by the Senate, That the Secretary of the Interior be directed to inquire of the government directors what securities the Union Pacific Railroad Company has taken, or holds, whether stock, bonds, or other evidence of debt, for its aid to the Colorado Central, the Utah Central, the Utah Southern, the Utah Northern, and the Republican Valley Railroads; what credits were received by the Union Pacific Railroad Company for the amount of $767,156.20; with whom the transaction in respect of said credits was had; what security the said company holds them for, and for what reason and upon what consideration the said credit was given, and report the answers of the government directors to the Senate, without delay.

The greater part of the information called for by the foregoing resolution may be found in the reports of the government directors for the years 1876 and 1877.

The following extract from the last annual report of the government directors (it being the one referred to in the aforesaid resolution of the Senate) will show that the investments involved in this inquiry were brought to the attention of the government at an early day:

> Upon the subject of the aid extended by the Union Pacific Company to other companies, the government directors, in their report for 1873, remarked: "With regard to the advances which the Union Pacific Company has made in aid of the roads mentioned, we can but repeat what we said in our report of 1872: 'We do not question the wisdom of a policy which tends to secure to the trunk-line the business which the said several roads may command. It could not well afford to have said business diverted from it. The policy, however, should be so ordered as not to interfere with whatever present or future claim the government may have for reimbursement. The ability of the company to make the advances referred to shows that it could have returned more to the government than it has, and raises the question of the power of the company to divert its means into channels not authorized by law.'"

We now proceed to answer the several subjects embraced in the resolution of the Senate in their order.

1.—THE COLORADO CENTRAL RAILROAD COMPANY.

The amount of the credit of $767,156.20, referred to in the said preamble and resolution, is made up as follows:

$210,000 Colorado Central Railroad Company first-mortgage bonds, at 85 cents	$178,500 00
396,000 Colorado Central Railroad Company first-mortgage bonds, at 80 cents	316,800 00
606,000 Colorado Central Railroad Company first-mortgage bonds	495,300 00
2,100 shares ($100 each) stock Colorado Central Railroad Company, at $25	52,500 00
$84,000 Gilpin County, Colorado, bonds, at 80 cents	67,200 00
Cash	118,978 35
Bill for ties	1,387 96
Correction entry (items charged in error)	31,789 89
Total	767,156 20

Of this $210,000 in first-mortgage bonds, received, as above stated, at 85, $100,000 were afterward returned to the Colorado Central Railroad Company, and they were charged back at the price at which they had been credited. The amount thereof, viz, $85,000, makes a part of the debit referred to in the preamble to the said resolution of the Senate.

The Union Pacific Railroad Company still holds of the securities received as above, the following: $506,000 first-mortgage bonds Colorado Central Railroad Company; 2,100 shares of capital stock of Colorado Central Railroad Company.

The transactions in respect to these credits were had with the officers of the Colorado Central Railroad Company—generally with its treasurer, and occasionally with its cashier. The securities were received

and applied on accounts, and the consideration therefore was the price named at which they were thus received and applied. The accounts involved the advances made by the Union Pacific Company to the Colorado Central and consisted of cash, freights, material, and equipment-

2.—THE UTAH CENTRAL RAILROAD COMPANY.

The interest of the Union Pacific Railroad Company in the Utah Central Railroad Company consists of the ownership of 5,300 shares of $100 each of the capital stock of that company. These shares were bought as follows:

3,000 shares, April 30, 1872, at 50	$150,000
2,000 shares, May 30, 1872, at 50	100,000
300 shares, October 16, 1874, at 90	27,000
5,300 shares, costing	277,000

The Union Pacific Railroad Company has already received, in way of cash dividends on this investment, $320,500. The relations established by the investment are considered of even more value than the immediate return.

3.—THE UTAH SOUTHERN RAILROAD COMPANY.

The Union Pacific Railroad Company now holds the following securities of the Utah Southern Railroad Company: $421,000 first mortgage bonds of this company; 5,000 shares ($100 each), full paid stock of same; 2,850 shares, 70 per cent. paid stock of same.

4.—THE UTAH NORTHERN RAILROAD COMPANY.

The Union Pacific Railroad Company now holds the following securities of this company, viz: $93,000 first mortgage bonds; 378 shares ($100 each) of the company's stock.

These securities were received in payment for freight charges on material shipped over the Union Pacific Railroad and going into the construction of the Utah Northern Railroad.

5.—THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY.

The Union Pacific Railroad Company now holds the securities of this company, viz: $605,000 first mortgage bonds; 2,125 shares ($100 each) of its capital stock.

These securities are held against the balance due to the Union Pacific Company for aid extended in the construction of said road, amounting to about $340,000.

The foregoing statements answer fully and in detail the several inquiries embraced in said resolution of the Senate; and as completely as we have been able to obtain what we consider reliable data upon which to base our answer.

In pursuance of the subject of this inquiry, it may be well here to state a fact lying beyond its scope: That the Union Pacific Company have adopted a policy of strengthening itself in business and results by aiding contributaries or feeding lines. In addition to the roads hereinbefore mentioned as having been aided by this company, it is its present purpose to immediately extend aid to the construction of a railroad from some feasible point on its line to the Black Hills region, which has of late grown into importance in the production of the precious metals.

The company insists that this enterprise, as it claims of the others herein reported upon, will strengthen it in the concentration of business upon its line, and in financial results. We report the fact in order that you may be informed thereof before any obligations or outlays are contracted in regard thereto.

Respectfully submitted by direction of the government directors of the Union Pacific Railroad Company.

JAMES F. WILSON,
Chairman of the Government Directors.

Hon. CARL SCHURZ,
Secretary of the Interior, Washington, D. C.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 41.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

COMMUNICATING

An estimate of additional appropriations required for the offices of surveyors-general for the fiscal year ending June 30, 1878.

MARCH 13, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1878.

SIR: I have the honor to transmit herewith an estimate of additional appropriations required for offices of the surveyors-general, for the fiscal year ending June 30, 1878; also a copy of a letter from the Commissioner of the General Land Office explanatory thereof.

I fully concur in the recommendation he makes, and respectfully request that appropriate legislative action be taken in the matter.

Very respectfully, &c.,

C. SCHURZ,
Secretary of the Interior.

Hon. WILLIAM A. WHEELER,
President United States Senate.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 7, 1878.

SIR: I have the honor to transmit herewith additional estimate of appropriation, in duplicate, to cover deficiencies in the offices of surveyors-general for salaries of clerks and contingent expenses for the fiscal year ending June 30, 1878, with request that the same may be transmitted to both houses of Congress with your recommendation that the amounts estimated may be provided for this purpose.

These estimates are required in consequence of the great reductions made by Congress in the annual estimates submitted by this office for the necessary expenses of the offices of surveyors-general for the present fiscal year.

In some instances, notably in that of California and Louisiana, the unexpended balances of the appropriations of March 3, 1877, for salaries of clerks in said offices will not be sufficient to pay the salaries for the present quarter.

In further explanation of the necessity for the additional appropriation of $18,825, I would state that the regular estimate of appropriation for the present fiscal year to cover the expenses of the offices of the surveyors-general named in the accompanying additional estimate was submitted by this office in the sum of $100,300, but was reduced by Congress to $43,000.

This unusual reduction was followed by stringent instructions to the surveyors-general not to exceed the respective amounts appropriated, directing them to reduce the number of clerks, and to pretermit purchases of stationery, &c., so as to confine absolutely necessary expenditures to the amount of the reduced appropriations. With all the efforts at economy on the part of those officers, the appropriation of $43,000 for clerk-hire and contingent expenses of their offices fell short by $18,825, which will be required to cover the most indispensable service in the offices of the surveyors-general.

I have, therefore, earnestly to recommend that the inclosed estimates be transmitted to Congress at the earliest opportunity, in order that action may be had upon them, and the estimated amounts appropriated in order to meet the quarterly paym ents for the present quarter.

I have the honor to be, very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

Estimates of additional appropriations required for the service of the fiscal year ending June 30, 1878, by the General Land Office.

Detailed object of expenditure, and explanations.	Total amount to be appropriated under each head of appropriation.	Amount appropriated for the current fiscal year ending June 30, 1878.	Estimated by General Land Office.
PUBLIC LANDS.			
Salaries, office of surveyor-general of California:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	$10,000	$10,000	$20,000
Contingent expenses, office of surveyor-general of California:			
For fuel, books, stationery, pay of messenger, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	1,475	3,000	7,000
Contingent expenses, office of surveyor-general of Dakota:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	300	1,500	2,400
Salaries, office of surveyor-general of Louisiana:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	3,100	2,000	18,000
Salaries, office of surveyor-general of Minnesota:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	200	5,000	8,600
Salaries, office of surveyor-general of Montana:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	200	3,000	7,500
Contingent expenses, office of surveyor-general of Montana:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	500	1,500	4,000
Salaries, office of surveyor-general of Nebraska and Iowa:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	300	3,000	6,300
Contingent expenses, office of surveyor-general of Nevada:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	300	1,500	4,000
Contingent expenses, office of surveyor-general of New Mexico:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	1,100	1,500	4,500
Salaries, office of surveyor general of Oregon:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	500	4,500	7,200
Contingent expenses, office of surveyor-general of Utah:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	200	1,500	2,500
Contingent expenses, office of surveyor-general of Washington:			
For rent of office of surveyor-general, fuel, books, stationery, and other incidental expenses (R. S., p. 393, sec. 2227; act of Mar. 3, 1877, 19 Stats., p. 349, sec. 1)	350	1,500	2,000
Salaries, office of surveyor-general of Wyoming:			
For clerks in his office (R. S., p. 393, sec. 2226; act of Mar. 3, 1877, 19 Stats., p. 315, sec. 1)	300	3,500	6,300
Total	18,825	43,000	100,300

NOTE.—The foregoing additional appropriations are required because great and unusual reductions of the estimates submitted by this office for the present fiscal year were made by Congress, and the amounts appropriated wholly inadequate to pay the salaries of even the reduced number of clerks and draughtsmen and the incidental expenses of the several offices.

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR.
General Land Office, March 7, 1878.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 42.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of March 4, 1878, information concerning the data from which the positions of the troops were added to the engineer maps of the Gettysburg battle-field, recently published.

MARCH 18, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, March 12, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in response to the resolution of the Senate of the 4th instant, report of the Chief of Engineers, concerning the data from which the positions of the troops were added to the engineer maps of the Gettysburg battle-field, recently published; also opinion as to the necessity of a text description, with diagrams showing the changing positions of troops.

The views of the Chief of Engineers are concurred in, and it is recommended that Congress provide in some adequate manner for the publication of the data in question, as well as for additional copies of the maps.

GEO. W. McCRARY,
Secretary of War.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., March 7, 1878.

SIR: I have to acknowledge the reference from the Secretary of War of a resolution of the Senate of the United States dated the 4th instant, concerning the data from which the positions of the troops were added to the maps of the Gettysburg battle field recently published by this department under the authority of the Secretary of War, and I have the honor to report as follows:

The data from which the positions of the troops were placed upon the engineer map of the battle-field of Gettysburg recently published were collected by Mr. John B. Bachelder, and, as stated on the map, are "from official reports, consultations on the field, private letters, and oral explanations of the officers of both armies."

The data are not therefore in the possession of the War Department. The collection is of the most perishable nature, is possessed by no one else than Mr. Bachelder, and, unless compiled by him, will, at his death, be lost to history.

The three War Department maps represent six phases of the battle,

two for each day, but most of the commands made frequent changes and took up different positions that do not appear on the maps, but which could be represented on diagrams by Mr. Bachelder from data in his possession, which would complete the illustration of the text. He could prepare and show the tactical movements at Gettysburg in more detail probably than has heretofore been done for any battle.

I have received a number of letters from distinguished officers of the Army of the Potomac and of the Army of Northern Virginia (copies herewith transmitted) expressing an earnest hope that the data collected by Mr. Bachelder, the result of several years' labor, should be arranged, compiled, and published, as explanatory of the maps of that battle recently published by the War Department.

I have also received a letter from Mr. Bachelder, submitting extracts from letters of distinguished officers in both armies to the same purport.

I concur most fully with all these officers, and hope that it may be deemed proper by Congress to make provision for the preparation and publication of this information, which otherwise will, I apprehend, be lost.

I attach now even greater importance to the data referred to than I did some years ago, when, in November, 1867, I recommended to the Secretary of War, General Grant, the employment of Mr. Bachelder in the preparation of the map of the battle of Gettysburg. I then said: "Mr. Bachelder, as you are probably aware, is preparing a history of the battle of Gettysburg. The information he has collected concerning that battle is extraordinary in amount and correctness. So far as I am able to judge, there is no battle of any war respecting which so many truthful accounts, so many exact details, have been collected and compared with each other, from every source, from the private to the general commanding the Army. Every fact known to the persons consulted has been carefully collected and its exactness tested. Mr. Bachelder has peculiar qualifications for the task he has undertaken, and has devoted four years to it."

I have been acquainted with the thoroughness of Mr. Bachelder's researches since the winter of 1863–'64, when he visited every part of the Army of the Potomac. I have since gone over the battle-field with him, and had many interviews with him concerning it.

The legislation necessary to secure the object desired is an adequate appropriation, the amount of which I am not prepared to state.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General, Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

NEW YORK, *February* 3, 1876.

MY DEAR GENERAL: I have seen the maps of the battle of Gettysburg on which Mr. Bachelder has laid down the positions of the troops. I think that a written description by him of the movements of troops during the three days, even down to single regiments and batteries, would be exceedingly interesting and valuable. His long study of the field and the operations of both armies has given him a fund of accurate information on the subject in great detail, which I believe is not possessed by any one else, and what he would write on the subject could

not fail to be of the greatest value to the historian in the future. As Gettysburg is probably the only great battle of the war, the movements of which in detail can now or hereafter be accurately represented, is it not wise to seize the occasion to have such details concerning the battle recorded while it can yet be done?

I am, dear general, very truly yours,

WINFIELD S. HANCOCK.

Gen. A. A. HUMPHREYS,
Chief of Engineers, Washington, D. C.

[General James Longstreet, Army of Northern Virginia, commanding First Corps.]

GAINESVILLE, GA., *December* 3, 1877.

MY DEAR SIR: Public opinion has settled upon the battle of Gettysburg as the culminating point of our late civil struggle so decidedly, that it seems destined to become the epitome of the war. I beg leave, therefore, to suggest the importance of a thorough narrative of events connected with the battle, as well as a detailed analysis of the tactical moves upon that field, with causes and effects, if it is possible to collect data from which such record may be made.

I am, sir, with great respect, your obedient servant,

JAMES LONGSTREET.

General A. A. HUMPHREYS,
Chief of Engineers, U. S. A.

[General G. K. Warren, Corps of Engineers.]

ENGINEER OFFICE, UNITED STATES ARMY,
Newport, R. I., January 23, 1878.

GENERAL: Mr. John B. Bachelder, the author of several instructive illustrations of the battle of Gettysburg, and who was employed by the War Department to make the three maps of the positions of the troops of both armies on the 1st, 2d, and 3d of July, has still unpublished in his possession a very large collection of notes taken on the field, and of conversations with the wounded of both armies immediately after the battle, and with the survivors in the Army of the Potomac the winter following, and with many officers at subsequent visits to Gettysburg, and also a very large collection of letters obtained by personal correspondence with officers concerning special points of interest. This information is of great importance to the understanding of the maps published, to the harmonizing of the official reports, and to the explanation of differences in the minds of distinguished participants in the battle on both sides, and it cannot be obtained from any other source. Unless compiled and arranged by Mr. Bachelder and published, it will be lost to the history of our country.

The whole of his efforts have been in the interest of truth, trusting to such assistance and recompense as a conscientiously truthful course would bring, and in his search he has gone alike among the soldiers of the North and the South.

It is earnestly hoped that records of all our important battles may be fully made up and published for our instruction, as far as it is possible

to do it, and therefore the opportunity which is afforded to do this in the case of the battle of Gettysburg is too precious to be lost.

Mr. Bachelder is willing and anxious to do the work, but he will need pecuniary assistance for his own support while thus engaged and to meet the many expenses attending it.

As the work is in every respect a national one, it does not seem improper to apply for aid from the government, and I hope he will receive favorable consideration and assistance in his efforts from all who are in position to bestow it.

Yours, very respectfully,

G. K. WARREN.

General A. A. HUMPHREYS,
Chief of Engineers, United States Army.

[General Fitzhugh Lee, Army of Northern Virginia, commanding cavalry brigade.]

RICHLAND, STAFFORD COUNTY, VA.,
January 21 1878.

MY DEAR SIR: For many reasons the battle of Gettysburg stands first in importance in the minds of the Northern and Southern people. All facts bearing upon the struggle there are highly interesting to the participants upon either side, the historian, and the military student. I have been informed that Mr. Bachelder has been most diligent in the collection of important data, and has enjoyed unusual opportunities to gain a complete knowledge of the *tactics* of the battle-field and much information which, as General Hancock says, "is not possessed by any one else." Those points, clothed in fair and impartial language, will be simply invaluable, and I know I express the sentiment of those upon my side, in the operations referred to, when I say that we hope every facility will be given to Mr. Bachelder to prosecute his purpose of compiling them.

Very respectfully, your obedient servant,

FITZHUGH LEE.

General A. A. HUMPHREYS,
Engineer Corps, U. S. A., Washington, D. C.

[General H. J. Hunt, Army of the Potomac, commanding artillery.]

CHARLESTON, S. C.,
January 26, 1878.

DEAR GENERAL: Mr. J. B. Bachelder, whose maps, engravings, &c., of the battle of Gettysburg are well known, and whose knowledge of the battle and battle-ground has been found so useful in preparing the official engineer maps, has a large amount of useful material for a history of the operations of the three days and of the events immediately preceding and following the conflict.

Mr. Bachelder has, within my knowledge, devoted much time and labor, on the ground and elsewhere, to collecting and verifying this material. Not being connected with either army, he has had no interests or desire, it is fair to presume, in presenting other than a perfectly correct and faithful account of all the facts in the case, as collected from the immediate actors, carefully collated, sifted, and arranged. His drawings

bear witness to the conscientious manner in which his work has been done.

I learn that he proposes to prepare this material for publication. I believe he knows as much of that battle as any one man has ever known of any battle, and its usefulness in connection with the government maps alone would be very great. But such a work would be of great general interest in view of the discussions now being published and attracting so much attention in regard to the conduct and events of the battle on both sides.

Much of his information, collected and noted under unfavorable circumstances, would be undecipherable and unintelligible for others, and under no circumstances could another make as good use of the material as the man who collected it. His knowledge, in its fullest extent, will die with him. It is of interest to the country that so much of it as can be should be secured.

I understand that he requires aid in getting out his work. It seems to me that such aid from the government would be legitimate. Although his book might not be of an official character, still it would greatly enhance the value of the official maps.

As commander of the artillery in that battle, I would respectfully urge your favorable consideration of his propositions. My own arm having no head to which I could address such an application, you are the most appropriate officer to whom I can address a paper of this nature.

Respectfully, your obedient servant,

HENRY J. HUNT,
Brevet Major-General.

General A. A. HUMPHREYS,
Chief of Engineers, U. S. A.

[General E. P. Alexander, Army of N orthern Virginia, commanding artillery in the third day's canonade.]

MONTGOMERY, ALA., *January* 5, 1878.

DEAR SIR: I have recently seen the magnificent maps of the battle of Gettysburg, on which Mr. Bachelder has located the positions and movements of every command in the two armies. As far I as have personal knowledge of the field, it is wonderfully correct.

Now that such an admirable map has been prepared, it only needs a connected and impartial narrative to make a complete study of this important battle and its interesting details, and both for military and historical students. I think such a narrative is exceedingly desirable. And such a narrative will be the more valuable the more detailed it can be, for I don't think it likely that any other of our great battles can ever be so minutely studied, and there ought to be a minute study of at least one.

I understand that an official history of the battle is, indeed, contemplated, and if so, I respectfully take the liberty of suggesting that Mr. Bachelder is peculiarly qualified to undertake it, from the long years of study which he has already given it, and the great amount of detailed information which he must have collected in locating the positions and movements of so many commands.

I am, general, very respectfully, your obedient servant,

E. P. ALEXANDER.

General A. A. HUMPHREYS,
Chief Engineer, United States Army.

[General George Sykes, Army of the Potomac, commanding Fifth Corps.]

FORT SNELLING, MINN.,
December 3, 1877.

DEAR GENERAL: I have often thought the information possessed by Mr. J. B. Bachelder respecting the battle of Gettysburg gave him the power to describe that battle better, perhaps, than any other person. His interest in it has been enthusiastic, and his work in its delineation is acknowledged to be of great value as a historical reference. I should be very glad to know that he was authorized by the War Department to prepare a history of the battle, and in this I think I am only expressing what I believe to be the general desire of those in command on that memorable occasion.

I am, general, yours, very respectfully,

GEO. SYKES,
Colonel Twentieth Infantry, Brevet Major-General, U. S. A.

General A. A. HUMPHREYS,
Chief of Engineers, U. S. A.

[General Abner Doubleday, Army of the Potomac, commanding First Corps and Third Division First Corps.]

No. 29 WEST 17TH STREET, NEW YORK, *December* 1, 1877.

GENERAL: A very large number of persons in the United States have either a direct personal interest in the battle of Gettysburg or an indirect interest from having had friends or relatives in that action. It is not only a great historical event, but one which in its minor details affects a large proportion of the families both at the North and at the South. This individual history ought to be preserved, if possible.

Colonel Bachelder is the only man who has made the subject a special study, and I hope you will make such representations to Congress that they may be induced to recognize Colonel Bachelder's services and preserve in proper form the results of his long and careful observations, so that the movements of regiments and companies and the heroic deeds of individuals may go upon the record.

I am, general, very respectfully, your obedient servant,

ABNER DOUBLEDAY,
Brevet Major-General, U. S. A., late Major-General of Volunteers.

To General A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

[General Henry Heth, Army of Northern Virginia, commanding division.]

RICHMOND, VA., *January* 5, 1878.

DEAR GENERAL: I understand that Col. John B. Bachelder proposes to compile and publish a work descriptive of the positions occupied by the various regiments and batteries that took part in the battle of Gettysburg, July 1, 2, and 3, 1863.

Feeling a very deep interest in everything that relates to that great battle, I am much pleased to hear that Colonel Bachelder has undertaken this very interesting work. No one has given this special subject the careful study that Colonel Bachelder has, and I presume no one is so competent as he is to prepare the work in question.

The battle of Gettysburg, whether viewed as *the great* battle (the turning point) of the late war, or simply as one of the great struggles of the world between two brave armies, will be ever interesting in all of its details, especially to the military student. Any information, therefore, that bears so directly—affording so much detailed information—upon facts concerning this great battlefield possesses, in my judgment, more than ordinary interest.

I am, general, very respectfully,

H. HETH.

General A. A. HUMPHREYS,
Washington, D. C.

[General Thomas H. Neill, Army of the Potomac, commanding brigade.]

HEADQUARTERS UNITED STATES CORPS CADETS,
West Point, N. Y., November 30, 1877.

DEAR GENERAL: I would like to express my opinion in regard to the relation in text of the movement of troops at the battle of Gettysburg by Mr. John B. Bachelder.

It appears to me that there is no one man living who is possessed of so much detailed knowledge upon this individual subject as Mr. Bachelder. As a contribution to military and historical literature, it is certainly a most desirable acquisition. It seems to me a duty to our country, as well as a source of great satisfaction to the living actors in that battle, to have the story told by one so competent to do it as Mr. Bachelder.

I am, general, with great respect, your obedient servant,

THOS. H. NEILL,
Brevet Brigadier-General, U. S. A.,
Commandant Cadets.

Maj. Gen. AND. A. HUMPHREYS,
Chief Engineer, U. S. A.,
Washington, D. C.

[General J. C. Robinson, Army of the Potomac, commanding Second Division, First Corps.]

BINGHAMTON, N. Y., *December* 13, 1877.

MY DEAR GENERAL: I have been shown a letter from General Hancock relating to the maps of the battle-field of Gettysburg and the position of the troops as laid down by Mr. Bachelder. I agree with the general that a written description, by Mr. Bachelder, of the movements of the different commands on each of the three days would be of very great value and exceedingly interesting both to those engaged in the battle and to the student of history. He is probably better qualified to do this than any one else, from the fact that he has thoroughly studied the subject and has made himself familiar with the movements and operations of both armies.

Very truly, yours,

JNO. C. ROBINSON,
Major-General, U. S. A.

General A. A. HUMPHREYS,
Chief of Engineers.

[General R. B. Ayres, Army of the Potomac, commanding Second Division, Fifth Corps.]

FORT HAMILTON, N. Y.,
December 7, 1877.

GENERAL: The suggestion has been made that the notes made by Mr. Bachelder, in connection with his maps of the battle of Gettysburg, should be published. His maps show a great knowledge of the field and the battle, and his notes cannot fail to be very valuable, and I concur in the wish that they be published.

Very sincerely,

R. B. AYRES.

Bvt. Maj. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

[General William C. Oates, Army of Northern Virginia, colonel commanding Fifteenth Alabama regiment.]

ABBEVILLE, ALA., *January* 14, 1878.

SIR: I have recently received from Mr. John B. Bachelder, of Boston, Mass., maps of the battle-field of Gettysburg, which I have carefully examined, and find them, in the main, so far as my knowledge goes, correct. There are some inaccuracies as to positions of Confederate commands on the right, where I was, but these are so inconsiderable, that in the main the maps may be said to be correct.

I regard Gettysburg as the great turning point in the war between the States, and for this reason a correct history in detail of the movement of the troops on both sides and of the most minute incidents of the battle will prove of greater interest to the people of this and future ages than any other battle. Mr. Bachelder seems to have devoted much time to a study of the field and the collection of information from both sides as to the positions and movements of the troops and general incidents of the battle. From what I know of him, from correspondence and otherwise, I believe him to be a capable and fair-minded man, who seeks earnestly for the truth. I therefore hope that he will undertake to write an impartial history of that great confiict of arms at Gettysburg, and thus give to the public the benefit of the information he has through years of effort obtained.

I am, general, very respectfully,

WM. C. OATES.

General A. A. HUMPHREYS,
Chief of Engineers, Washington, D. C.

[General J. B. Sweitzer, Army of the Potomac, commanding brigade.]

PITTSBURGH, PENN., *December* 14, 1877.

MY DEAR SIR: I am advised that many of the officers of each of the armies that fought at Gettysburg have solicited Mr. Bachelder to publish the information relating to that battle that he has collected, and that he is unable to do so without other means than his own. That this information should be preserved and placed within the reach of all our people, no one will deny. The contest was between the Army of the Union and the army against the Union. It was therefore a national

contest, and the nation might very properly undertake to preserve its history. I therefore advocate an appropriation by Congress for that purpose.

Very respectfully, yours,

J. B. SWEITZER.

General A. A. HUMPHREYS,
Chief of Engineers, Washington, D. C.

[Judge Dana, Army of the Potomac, colonel One hundred and forty-third Pennsylvania Volunteers, commanding Stone's brigade.]

WILKESBARRE, PA., *December* 14, 1877.

DEAR GENERAL: In view of the interest manifested throughout the country in the subject, it seems desirable that an accurate and connected account should be given of the three days' operations which constituted the battle of Gettysburg.

The careful collation of the official reports by one thoroughly competent and acquainted with the grounds as they appeared at the close of the conflict is, of course, essential; and for this, it appears to me that Col. John B. Bachelder has shown himself well qualified. His study of the field commenced almost as soon as the smoke disappeared, has been pursued for years as a labor of love, and he appears to have consulted every accessible source of information. I trust that the results of his labors may be given to the public.

Very respectfully,

E. L. DANA.

General A. A. HUMPHREYS,
Chief of Engineers, United States Army.

[General J. B. Robertson, Army of Northern Virginia, commanding brigade in Hood's Division.]

SAINT LOUIS, MO., *January* 26, 1878.

DEAR SIR; I have seen and examined the map of the battle of Gettysburg on which Mr. Bachelder has laid down the position of the troops, and the creditable correctness it exhibits, as far as my participation and observation enable me to judge, enables him to give such a history of the events and participation of the different commands in that battle and the events immediately preceding it as would be both interesting and a valuable contribution to history, and should, in my opinion, be done by him.

I remain, very respectfully,

J. B. ROBERTSON.

General A. A. HUMPHREYS,
Chief of Engineers, Washington, D. C.

[General J. B. Carr, Army of the Potomac, commanding First Brigade, Humphreys's Division.]

TROY, N. Y., *December* 12, 1877.

GENERAL: The map of Gettysburg which Mr. John B. Batchelder published is, in my opinion, very truthful in every respect.

I believe a written description by him of the movements of each and

every command during the three days' fighting would be exceedingly interesting and of great value to those that participated in the memorable campaign, and could not fail to be of the greatest value and importance to the historian for future reference.

As Gettysburg is no doubt acknowledged to be the greatest battle of the war, would it not be well to have the movements, which in detail can now be so accurately obtained from Mr. Bachelder's manuscripts, published at the expense of the government?

In my judgment now is the time to move in the matter.

I am, general, very respectfully, your obedient servant,

J. B. CARR.

Maj. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

[General A. T. A. Torbert, Army of the Potomac, commanding brigade.]

CONSULATE-GENERAL, DES ETATS UNIS d'AMÉRIQUE,
3 *Rue Scribe, Paris, le* 3 *January*, 1878.

MY DEAR SIR: Through the courtesy of your department I have received the maps of the battle of Gettysburg on which Mr. J. B. Bachelder has laid down the positions of the troops for the three days. I have studied the maps carefully, and as far as my knowledge of the battle extends, he is correct in every particular. And from what I know of Mr. Bachelder's study of this battle, I do not believe there is any one more capable of giving the detailed movements of both armies.

I am, very truly, your obedient servant,

A. T. A. TORBERT,
Late Brevet Major-General, U. S. A.

General A. A. HUMPHREYS,
Chief of Engineer Department, Washington, D. C.

[General S. S. Carroll, Army of the Potomac, commanding brigade.]

BRIGHTWOOD POST OFFICE, D. C.,
January 14, 1878.

MY DEAR GENERAL: Not long since I had a conversation with Mr. Bachelder on the subject of the battle of Gettysburg. He has been urged by nearly all the surviving division and corps commanders who participated in that great battle (on both sides) to publish an account of it, which, from the vast amount of material he has collected, he is better able to do than any one else.

In view of its having been the great decisive action of the war, and the only one about which the same information of all the positions and incidents could be accurately given, I believe it would be of great interest to all who were connected with it if such account could be published; and it could only be done by aid from the government, as it would be a risk of great expense for him to attempt relying upon sales for reimbursement.

As I understand others have done so, I therefore take the liberty to

urge the importance of the subject upon the department of which you are the honored chief.

General, I have the honor to be, respectfully and truly, yours,

S. S. CARROLL,
U. S. Army.

General A. A. HUMPHREYS,
Chief of Engineer Corps, U. S. Army.

[General William S. Tilton, Army of the Potomac, commanding brigade.]

TOGUS, ME., *January* 2, 1878.

MY DEAR GENERAL: I trust that Mr. Jno. B. Bachelder's enterprise of publishing a history of the battle of Gettysburg may be fostered by the government. It was the great and decisive battle of the war, and its true inwardness, which Mr. B. only is able to expose, will not only form a very interesting and curious history for contemporaries, but it will furnish a lesson to the military student for all time.

Respectfully, yours,

WM. S. TILTON.

General A. A. HUMPHREYS,
Chief of Engineers, Washington, D. C.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 43.

LETTER

FROM

THE SECRETARY OF WAR,

INVITING

Attention to the condition of the appropriation allotted for the public printing for the War Department, and recommending an additional appropriation therefor for the current fiscal year.

MARCH 19, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, March 18, 1878.

The Secretary of War has the honor to state that he is informed by the Public Printer that the allotment of appropriation for the public printing of this department will be exhausted by filling the requisitions now in hand. (See annexed telegram.)

The appropriation for this department for the present fiscal year was $72,000. This sum is inadequate to the needs of the public service. The appropriation formerly given was $100,000, and it is respectfully submitted that this sum should be appropriated for the next fiscal year.

It is respectfully recommended that an additional appropriation for the current fiscal year of at least $25,000 be provided for in the deficiency bill now pending, as this sum is absolutely necessary.

GEO. W. McCRARY,
Secretary of War.

To the PRESIDENT *United States Senate.*

[War Department telegram.]

WASHINGTON, D. C., *March* 19, 1878.

(From Government Printing Office.)

To H. T. CROSBY, *Chief Clerk:*

We cannot furnish the blanks ordered on requisition 2687, from the Quartermaster-General's Office, on account of your appropriation being about exhausted.

A. F. CHILDS.

O

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 44.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In answer to a Senate resolution of March 11, 1878, *information in relation to the appointment of a third commissioner under the twenty-third article of the treaty of Washington, on the question of the fisheries.*

MARCH 21, 1878.—Read, ordered to lie on the table and be printed.

To the Senate :

In answer to the resolution of the Senate of the 11th of March, instant, I herewith transmit a report from the Secretary of State, with accompanying documents.

R. B. HAYES.

WASHINGTON, *March* 21, 1878.

DEPARTMENT OF STATE,
Washington, March 19, 1878.

The Secretary of State, to whom was referred the resolution of the Senate of the 11th of March, 1878, requesting the President to communicate to the Senate at the earliest practicable day, "if not in his judgment incompatible with the public interest, copies of all correspondence between our government and the Government of Her Britannic Majesty in regard to the selection of M. Maurice Delfosse, envoy extraordinary and minister plenipotentiary from Belgium, as the third commissioner under the twenty-third article of the treaty of Washington, on the question of the fisheries," has the honor to lay before the President the correspondence called for by the resolution.

Respectfully submitted.

WM. M. EVARTS.

The PRESIDENT.

ACCOMPANYING PAPERS.

1. Mr. Davis to Sir Edward Thornton, July 7, 1873.
2. Sir Edward Thornton to Mr. Davis, July 16, 1873.
3. Sir Edward Thornton to Mr. Fish, August 19, 1873.
4. Mr. Fish to Sir Edward Thornton, August 21, 1873.
5. Sir Edward Thornton to Mr. Davis, August 26, 1873.

6. Mr. Fish to Sir Edward Thornton, September 6, 1873.
7. Sir Edward Thornton to Mr. Fish, September 12, 1873.
8. Sir Edward Thornton to Mr. Davis, September 24, 1873.
9. Mr. Fish to Sir Edward Thornton, September 30, 1873.
10. Sir Edward Thornton to Mr. Fish, October 1, 1873.
11. Mr. Fish to Sir Edward Thornton, October 3, 1873.
12. Sir Edward Thornton to Mr. Fish, October 4, 1873.
13. Sir Edward Thornton to Mr. Fish, October 24, 1873.
14. Mr. Fish to Sir Edward Thornton, October 25, 1873.
15. Sir Edward Thornton to Mr. Fish, October 27, 1873.
16. Sir Edward Thornton to Mr. Fish, December 2, 1873.
17. Sir Edward Thornton to Mr. Cadwalader, April 21, 1875.
18. Mr. Fish to Sir Edward Thornton, May 8, 1876.
19. Form of identic note received February 8, 1877.
20. Mr. Evarts to Sir Edward Thornton, March 20, 1877.
21. Sir Edward Thornton to Mr. Evarts, March 21, 1877.

No. 1.

Mr. Davis to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, July 7, 1873.

SIR: The necessary legislation to carry into effect the XVIIIth, XIXth, XXth, and XXIst articles of the treaty of May 8, 1871, between the United States and Her Britannic Majesty having been passed and those articles having gone into effect on the first of the present month, the time for forming the commission under the XXIId, XXIIId, XXIVth, and XXVth articles of that treaty has now arrived. To do this it is necessary that the two governments shall agree upon a third commissioner, who, under the provisions of the XXIIId article, is to be named by the President of the United States and Her Britannic Majesty conjointly.

The treaty further provides that if at the expiration of three months from the time when the articles take effect the third commissioner shall not have been agreed upon, he then shall be named by the representative of His Majesty the Emperor of Austria and King of Hungary, in London.

In several conversations on this subject, which have taken place between Mr. Fish and you at various times during several months past, you will doubtless remember how decidedly he expressed the opinion that it will be better for both countries that they should agree upon the third commissioner if possible, and that in any event no person should be thought of in that capacity who is not thoroughly familiar with the English language.

In these interviews several names were put forward by way of suggestion, but unofficially and without coming to a conclusion as to any.

Mr. Fish is deeply impressed with the opinion that unless the two governments can soon agree upon a third commissioner the arbitration will be carried over to another season. In order to avoid that contingency this government is willing to take the initiative and suggest to Her Majesty's Government the names of a number of persons, each one of whom would, in the opinion of the President, be influenced only by a de-

sire to do justice between the parties. The names which are proposed are taken from the diplomatic corps at Washington who are now in this country, and it has been the aim to name none but those who have the necessary familiarity with the English language, omitting, however, those who by reason of the peculiar political connection of their governments with Great Britain would probably esteem themselves disqualified for the position.

I have the honor, therefore, to suggest for the consideration of the Government of Her Britannic Majesty the names of Señor Don Ignacio Mariscal, envoy extraordinary and minister plenipotentiary of Mexico at Washington; Le Chevalier Baron Henri d'Offenberg, envoy extraordinary and minister plenipotentiary of Russia at Washington; Councilor A. P. de Carvalho Borges, envoy extraordinary and minister plenipotentiary of Brazil at Washington; Admiral Don José Polo de Bernabé, envoy extraordinary and minister plenipotentiary of Spain at Washington; the Marquis de Noailles, envoy extraordinary and minister plenipotentiary of France at Washington; Mr. Bernhard de Westenberg, minister resident of the Netherlands at Washington.

The President will concur in the nomination of either of the gentlemen as the third commissioner should Lord Granville be willing to intimate a preference for any one of them.

It will be observed that I have omitted the name of Count Corti, the envoy extraordinary and minister plenipotentiary of Italy at Washington, who is at present engaged in the execution of a similar trust under the treaty. It is supposed that this might prevent his acceptance of the trust in relation to the fisheries, but should he be willing to undertake it, and should Lord Granville prefer to name him, the President would concur in that nomination.

I have the honor, &c.,

J. C. B. DAVIS,
Acting Secretary.

No. 2.

Sir Edward Thornton to Mr. Davis.

CATSKILL STATION,
July 16, 1873.

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant, which, however, did not reach me at Washington till the 11th instant, relative to the appointment of a third commissioner to the Fisheries Commission, which in accordance with the provisions of the treaty of May 8, 1871, is to meet at Halifax.

I telegraphed the substance of that note to Earl Granville on the same day, the 11th instant, and have since then transmitted a copy of it to his lordship by mail.

I have, &c.,

EDWARD THORNTON.

No. 3.

Sir Edward Thornton to Mr. Fish.

BRITISH LEGATION, CATSKILL STATION,
August 19, 1873.

MY DEAR MR. FISH: You may remember that when I last saw you at Washington I spoke to you upon the subject of the Belgian minister being a suitable person as third commissioner on the commission which is to sit at Halifax. I supposed then that he would be agreeable to Her Majesty's Government, as I had hoped that he would have been to yours, until I spoke to you upon the subject. I subsequently received a telegram from Lord Granville desiring me to ascertain whether the Belgian minister would be agreeable to the Government of the United States as third commissioner. I replied that I had already conversed with you upon the subject, and had come to the conclusion that he would not be acceptable.

On my return home yesterday afternoon from Glenclyffe, I found a telegram awaiting me, in which Lord Granville desired me to ask you in his name that you would consent to the appointment of the Belgian minister, who, as he believes, would be in all respects a suitable person for the position. Indeed, he fears that if the two governments cannot come to an agreement, there will be nothing for it but to leave the selection to the Austrian ambassador in London, in accordance with the terms of the treaty.

I hope very sincerely that you will reconsider this matter, for I cannot but believe that Mr. Delfosse would be an impartial person, and the fact of his being accredited to the United States would be, if anything, rather to our disadvantage than otherwise.

Believe me, my dear Mr. Fish, very truly yours,

EDWD. THORNTON.

No. 4.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, August 21, 1873. (Written at Garrison's.)

MY DEAR SIR EDWARD: Returning last evening from New York, whither I had been called to attend the funeral of a dear and aged friend, I found your letter of 19th.

You state that subsequent to a conversation we had had in Washington (on 5th instant) on the subject of the third commissioner on the commission which is to sit in Halifax, wherein you had suggested the Belgian minister as such commissioner, and I had mentioned that this government could not assent to his selection, you had received a telegram from Lord Granville desiring you to ascertain whether that minister would be agreeable to the Government of the United States as such commissioner, and that you had replied that, having already conversed with me upon the subject, you had come to the conclusion that he would not be acceptable; that returning home on the day preceding the date of your letter you found a telegram awaiting you in which Lord Granville desired you to ask in his name that this government would assent to the appointment of the Belgian minister.

I cannot persuade myself but that the telegraph must have made some grave mistake, either in the transmission of your communication to Lord Granville of the inability of this government to assent to the selection of the Belgian minister, or in that to you from his lordship proposing that gentleman, after being informed of the views of this government with regard to his selection.

The probability of the occurrence of such mistake seems to be the greater in view of what you will excuse me in reminding you of, that some weeks since I had the honor to address you a note submitting the names of several gentlemen, representatives of foreign powers, either of whom this government expresses itself ready to agree upon, each of whom was believed to be peculiarly competent and suitable for the position, and to neither of whom was it supposed that the British Government would have objection. To that note and its proposition no reply has been received.

The habitual courtesy and delicate observance of diplomatic etiquette and propriety on the part of the British Government do not allow me to believe that, with the proposition of this government unanswered, and with the knowledge that it could not accept a certain person as the commissioner, Her Majesty's Government has intended to present the name of that person, and strengthen the conviction that there has been some misconveyance of information or of instruction for which the telegraph must be responsible.

In the interviews with you in Washington (on the 5th instant) I mentioned that, while entertaining a high personal regard for the character and abilities of the Belgian minister to this country, there were reasons in the political relations between his government and that of Great Britain why the representative of the former could not be regarded as an independent and indifferent arbitrator on questions between the Government of Her Majesty and the United States.

When the joint high commission was in session in Washington, during a discussion concerning a proposed reference to one or more heads of foreign states, Earl de Grey, while proposing several, stated that he would not name Belgium because of the relations of that power to Great Britain, which he supposed might make it unacceptable to the United States as a referee.

There was no dissent expressed by either of the joint high commissioners to the very considerate reason assigned by the Earl de Grey for withholding the suggestion of that state in that connection. On the part of the American commissioner, we felt the delicacy of the conclusion and the propriety and justness of the reason assigned. I am not aware that the relations to which Lord de Grey referred have been materially changed.

We are very desirous to agree with your government in the selection of the third commissioner without recourse to the Austrian ambassador in London, and with that view submitted a list of several names, to none of whom did we suppose there could be any objection, and invited Lord Granville's selection of one.

Allow me to recall attention to that proposal of the President. If Lord Granville objects to all of the gentlemen named in our proposition, I hope that some other name or names may be suggested, which may not be known in advance of their suggestion to be incapable of acceptance by one of the parties.

Believe me, my dear Sir Edward, very truly yours,

HAMILTON FISH.

The Right Hon. SIR EDWARD THORNTON, *K. C. B., &c., &c., &c.*

No. 5.

Sir Edward Thornton to Mr. Davis.

WASHINGTON, *August* 26, 1873.

SIR: I have the honor to refer to your note of the 7th ultimo, which I received on the 11th of that month, and a copy of which I transmitted to Earl Granville on the 15th.

In it you suggested for the consideration of Her Majesty's Government the names of several of my colleagues at Washington, and informed me that the President would concur in the nomination of either of those gentlemen as third commissioner on the commission which is to meet at Halifax under Articles XXII, XXIII, XXIV, and XXV of the treaty of May 8, 1871.

As the matters which are to be considered by this commission deeply concern the people of Canada, it was necessary to consult the government of the Dominion upon a point of so much importance as the appointment of a third commissioner, and some delay was therefore unavoidable.

I have now, however, the honor to inform you that Her Majesty's Government has received a communication from his excellency the governor-general of Canada, to the effect that the government of the Dominion strongly objects to the appointment of any of the foreign ministers residing at Washington as third commissioner on the above-mentioned commission, and prefers to resort to the alternative provided by the treaty, namely, to leave the nomination to the Austrian ambassador at London.

I have the honor, &c.,

EDWD. THORNTON.

No. 6.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, September 6, 1873.

SIR: I have the honor to acknowledge the reception of your note bearing date the 26th day of August, addressed to Mr. Davis, in which an acknowledgment is made of a note addressed by him, as Acting Secretary, to you on the 7th of the preceding month of July. You mention that you had transmitted a copy to Earl Granville on the 15th of July; that it suggested for the consideration of Her Majesty's Government the names of several of your colleagues at Washington, and informed you that the President would concur in the nomination of either of those gentlemen as third commissioner on the commission which is to meet at Halifax, under Articles XXII, XXIII, XXIV, and XXV of the treaty of May 8, 1871; that as the matters which are to be considered by the commission deeply concern the people of Canada, it was deemed necessary to consult the government of the Dominion upon a point of so much importance as the appointment of a third commissioner, and some delay had therefore been unavoidable. You then inform me that Her Majesty's Government has received a communication from his excellency the governor-general of Canada, to the effect that the government of the Dominion strongly objects to the appointment of any of the foreign ministers

residing in Washington as third commissioner on the above-mentioned commission, and prefers to resort to the alternative provided by the treaty, namely, to leave the nomination to the Austrian ambassador in London.

It is not distinctly stated in your note that Her Majesty's Government had decided to relinquish the effort to select the third commissioner conjointly with the President of the United States, and to abandon the mode pointed out by the treaty for the appointment of this third commissioner, when less than two-thirds of the time which the treaty had provided for their joint action had expired.

Article XXIII of the treaty provides that the commissioners shall be appointed in the following manner, that is to say:

One commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third commissioner shall be named by the representative at London of His Majesty the Emperor of Austria and King of Hungary.

The article took effect on the first day of July last; the three months within which the two governments were to make their effort for a conjoint appointment will consequently not expire until the last day of September.

There had been several informal communications between you and myself in anticipation of the time when the article took effect as to the selection of the third commissioner in pursuance of the terms of the treaty; but reaching no conclusion. On the 7th of July the Acting Secretary of State addressed you the note of which no acknowledgment was received until the note of 26th of August, which I now have the honor to acknowledge.

The President learns with regret that in the list of names presented in the note of July 7, for the consideration of Her Majesty, no one was found in whom Her Majesty's Government was willing to confide. The President, nevertheless, retains the fullest confidence in the impartiality, independence, intelligence, and integrity of each of the gentlemen named.

The reference in your note to the people and the Dominion of Canada seems to imply a practical transfer to that province of the right of nomination which the treaty gives to Her Majesty.

The President is of opinion that a refusal on his part to make a nomination, or abstinence on his part from effort to concur in the conjoint nomination contemplated by the treaty, on the ground that some local interest (that for instance of the fishermen of Gloucester) objected to the primary mode of filling the commission intended by the treaty might well be regarded by Her Majesty's Government as a departure from the letter and spirit of the treaty; and might justify it in remonstrating, and possibly in hesitating as to its future relations to a commission with respect to which he, as the head of the government, and to whom, in conjunction with its own sovereign, Great Britain had committed the right of selecting a member, had delegated that right to interested parties, and had thereafter abstained from effort at agreement in the mode of appointment prescribed by the treaty.

It is noticed, however, with much satisfaction that Her Majesty's Government has not expressed a determination to abandon the joint right of nomination which the treaty reposes in Her Majesty; and the reference in your note to the expressed wishes of the Province of Canada is understood to be in explanation of the fact that so long a period of the three months, within which the conjoint nomination was to be made, had elapsed between the date and the acknowledgment of the note of 7th July.

The President is extremely anxious for the organization of the commission as contemplated by the treaty; and it is earnestly hoped that within the remaining part of the three months allowed for a conjoint nomination, Her Majesty's Government may find it consistent with their views, if not to make choice of one of the gentlemen proposed by the President, to propose some one or some others for his consideration.

I have the honor, &c.,

HAMILTON FISH.

No. 7.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *September* 12, 1873.

SIR: I have the honor to acknowledge the receipt on the 10th instant of your note of the 6th instant, on the subject of the appointment of a third commissioner in accordance with Article XXIII of the treaty of May 8, 1871, and to inform you that I am this day forwarding a copy of it to Earl Granville.

In it you refer to the delay which had taken place in answering Mr. Bancroft Davis's note of the 7th of July last, upon the same subject. With regard to this point I take the liberty of observing that Mr. Davis's note did not reach me till the 11th of July, that I forwarded a copy of it to Earl Granville on the 15th of that month, which was the first opportunity, and that the time which intervened between that date and the 26th of August, the date of my answer, does not seem excessive for its conveyance to England, its consideration by Her Majesty's Government, and the subsequent transmission of instructions to me.

I have the honor, &c.,

EDWD. THORNTON.

No. 8.

Sir Edward Thornton to Mr. Davis.

CATSKILL STATION,
September 24, 1873.

SIR: Towards the end of June last I had the honor, in compliance with an instruction from Earl Granville, to inform Mr. Fish at the Department of State that as there was a difficulty in finding a person to act as third commissioner on the commission which is to meet at Halifax in accordance with the provisions of the treaty of May 8, 1871, upon the appointment of whom the Governments of the United States and of Her Majesty could agree, Her Majesty's Government proposed that the ministers of the United States and of Her Majesty at the Hague should be authorized to see if they could not agree upon some Dutch gentleman to act as third commissioner, who would be acceptable to both governments.

Mr. Fish recently stated to me that as I had made this proposal verbally he had not looked upon it as an official communication. I have now been instructed by Lord Granville to repeat the above-mentioned proposal to the United States Government in a more official form, and I have now the honor of doing so by means of this note, of inviting the

Government of the United States to take it into consideration, and of expressing my hope that it may be able to agree to the proposal thus made by Her Majesty's Government.

I have the honor, &c.,

EDWD. THORNTON.

No. 9.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, September 30, 1873.

SIR: I have the honor to acknowledge the receipt on the 27th instant of your note of the 24th instant to Mr. Davis, dated at Catskill Station, officially proposing to this government "that the ministers of the United States and of Her Majesty at the Hague should be authorized to see if they could not agree upon some Dutch gentleman to act as third commissioner on the commission which is to meet at Halifax, in accordance with the provisions of the treaty of May 8, 1871."

In reply I am directed by the President to say that the plan for naming a third commissioner thus proposed by Her Majesty's Government varies from the provisions of the treaty, which has received the Constitutional assent of the Senate. The President, therefore, does not feel himself at liberty to entertain a proposal which would require the conclusion of a new treaty in the Constitutional form, before the proposal could be assented to by the United States.

It is deeply to be regretted that Her Majesty's Government has made no effort to comply with that provision of the XXIIId article of the treaty whereby it was agreed that the third commissioner should be named "by the President of the United States and Her Britannic Majesty conjointly."

Although the time within which the two governments were to have made the joint nomination expires to-day, yet the fact that Lord Granville authorized so important a proposal to be made so close to the expiration of the period, induces me to believe that Her Majesty's Government may be disposed not to regard that fact as important, and that it may yet be willing to endeavor to carry into execution the manifest intent of the treaty.

The President, therefore, still entertains the hope that the efforts which the United States have made in that direction will meet with a response from Her Majesty's Government.

I have the honor, &c.,

HAMILTON FISH.

No. 10.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *October* 1, 1873.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, stating that for certain reasons therein mentioned the President does not feel at liberty to entertain the proposal that the minis-

ters of the United States and of Her Majesty at the Hague should be authorized to see if they could not agree upon some Dutch gentleman to act as third commissioner in the commission which is to meet at Halifax, in accordance with the provisions of the treaty of May 8, 1871.

I shall not fail to forward a copy of your note to Earl Granville. But in the mean time I feel it my duty to express my conviction that Her Majesty's Government has made every effort to comply with that provision of the XXIIId article of the treaty whereby it was agreed that the third commissioner should be named "by the President of the United States and Her Britannic Majesty conjointly." If its efforts have not been attended by that success which it earnestly desired, it was because it was found impossible to select a person who would be acceptable to the Government of the United States as well as to that of Her Majesty.

Proof of its desire has been given by the proposal which I made to you that the Belgian minister at Washington should be appointed to the position, as also by the proposal transmitted in my note of the 24th instant to Mr. Davis.

But with regard to the latter proposal I cannot but consider that it was first made to you officially on the 26th of June last. You will doubtless remember that on the morning of that day I waited upon you at the Department of State, taking with me the telegram which I had received on the previous day from Earl Granville, and that I then communicated to you verbally the proposal made by Her Majesty's Government that the British and American ministers at the Hague should be authorized to confer together and see if they could agree upon some Dutch gentleman who would be acceptable to both governments. You at that time made some objections to such a course, and after some conversation you concluded by saying that, although you considered it as difficult of adoption, you did not wish to be considered as absolutely declining it.

At about that time the President was called away to Covington by the state of health and subsequent decease of his father. I understood, therefore, that you could not communicate with him at an early moment.

On the 11th of July I received your note of the 7th of that month in which you proposed, in the name of the President, certain of my colleagues for the selection of a third commissioner. This counter-proposal seemed to me to be a tacit intimation that, the President was unable to accept the proposal which I had made on behalf of Her Majesty's Government.

But as I have frequently received verbal communications from yourself as official, and transmitted them to my government, so I consider that the proposal made by me on the 26th of June last was official. It was, therefore, with some surprise that I learnt from you, more recently, at your country house, at Garrison's, that you had not looked upon the proposal as an official one. It was in consequence of my having communicated your opinion to Earl Granville that I was instructed to repeat the proposal, as I had the honor of doing in my note of the 24th ultimo.

I have the honor, &c.,

EDWD. THORNTON.

No. 11.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, October 3, 1873.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant respecting the third commissioner in the commission which is to meet at Halifax, in accordance with the provisions of the treaty of May 8, 1871. I am pleased to know that a copy of my note, whose receipt it acknowledges, is to be transmitted to Lord Granville, that he may know how earnestly the President desires to have the treaty of Washington completely executed in letter and spirit.

I feel it my duty, in response to that part of your note in which you express your conviction that Her Majesty's Government has made every effort to comply with the provisions of Article XXIII of the treaty, to recall to your recollection some circumstances which were overlooked by you in the reference to our conversations together, which followed your statement.

For some weeks, indeed I may say months, before the first of July, in view of the fact that what may be called the Canadian articles of the treaty were to come into operation on that day, I expressed to you the desire of this government that the two powers should agree upon the third commissioner. In repeated interviews I said that if Her Majesty's Government would present names for our consideration, we would take them up with the desire and the intention of finding some one whom we could accept. In each and all of these interviews I received the impression that Her Majesty's Government regarded the suggestions with favor. I do not remember that any intimation was made to me that Her Majesty's Government desired that we should propose names for its consideration; had that been done I should have been ready to respond to it.

In an interview toward the close of June (which you refer to as having taken place on the 26th) you stated to me that Lord Granville would be willing to leave the selection to the British and American plenipotentiaries at the Hague; but I did not understand that the suggestion was intended as an official proposal. Indeed, I should not have been justified in assuming that Her Majesty's Government would advance an official proposal to abrogate a provision of a treaty in so informal a way. Your statement of what took place at that interview does not appear to me to be complete, as I take the liberty of submitting for your consideration a transcript of minutes made in my diary at the time it took place:

> I tell him (Sir Edward Thornton) that the proposition does not strike me favorably; that I will not either accept or decline until I have an opportunity of conferring with the President; that it is a very unequal proposition; that the Hague is within a few hours by post of London and some 12 to 16 days from here; and that if we should resort to the telegraph it would be very expensive and all pass through and be read in the British post-office; that we could therefore have no confidential communication with our minister, who was also comparatively a stranger in Holland, having been there but a relatively short time, and, not speaking the language, has probably a not very extensive acquaintance.
>
> I told him that I must frankly say that I considered the proposition as one intended to be rejected in order to throw the appointment on the Austrian minister in London. He (Sir Edward) thought that the British Government wished to avoid an appointment by the Austrian minister. I commented on the delay of Lord Granville in considering the subject which I brought to Sir Edward's notice several months ago, and that they have delayed all consideration of the subject until now; that we are within five days of the time when the articles are to go into effect, and added that I could not refrain the expression of opinion that the delay appeared to be intentional. He thought not, and asked me whether I would consider and let him know what conclusion we came to. I repeated the disfavor with which I regarded it, but would consider it.

When the 1st of July had passed without any nominations on the part of Her Majesty's Government, without a request for nominations on our part, with no response from Great Britain to the efforts on the part of the United States to have executed the agreement that the third commissioner should be named by "the President of the United States and Her Britannic Majesty conjointly," and with an intimation that Her Majesty's Government desired to abrogate the provisions of the treaty in this respect, the Acting Secretary of State, under my instructions, presented for the selection of Her Majesty's Government as third commissioner the names of several members of the diplomatic corps at Washington, in a note in which it was stated that any one of the gentlemen named would be acceptable to the President.

This list was intended to include, and it was believed to include, the names of every member of the corps who had the requisite acquaintance with the English language, and whose government was free from political treaty arrangements with England.

The name of the Belgian minister was omitted in the list, although the President felt entire confidence that the great intelligence and high character and integrity of Mr. Delfosse well fitted him for the position. The omission was designedly made in consequence of what had taken place in the joint high commission when the subject of the selection of arbitrators for the Geneva tribunal was under discussion. I find on referring to a diary of the proceedings of that commission, written at the close of each day, that on the 5th of April, 1871, Lord de Grey said "that he could name several heads of states any one of whom would be acceptable to Great Britain"; that Judge Nelson said, "suppose you name some"; and that "Lord de Grey named the sovereigns of Italy, Holland, Spain, Sweden, Switzerland, Austria, and Denmark; he said he did not name Belgium or Portugal, because Great Britain had treaty arrangements with them that might be supposed to incapacitate them."

It was assumed in making up a list for the consideration of Her Majesty's Government that the motives of delicacy which influenced it at that time would be equally potent now, and the Acting Secretary was therefore directed to refrain from naming Mr. Delfosse.

Some weeks after the note of the Acting Secretary had been sent, you spoke to me in Washington of Mr. Delfosse as a suitable person as third commissioner, and I stated to you, in reply, the reason why he had not been named by Mr. Davis. I understand from your letter of the 19th of August that you communicated the result of that conversation to Lord Granville.

With a full knowledge of the objections of the President and of the reasons for that objection, Lord Granville then desired you to ask me in his name that I would consent to the appointment of the Belgian minister. To your letter of the 19th of August, transmitting this request, I answered, recalling again to your recollection what had taken place in the joint high commission, reiterating the earnest wish of this government that the treaty should be executed, according to its letter, by the joint nomination of the third commissioner, and expressing the hope that if Lord Granville could not select a name from those which had been submitted by the President, "some other name or names may be suggested which may not be known, in advance of their suggestion, to be incapable of acceptance by one of the parties."

Having authorized you on the 19th of August to name the Belgian minister residing at Washington as the third commissioner, I had a right to suppose that Her Majesty's Government would not object to the nominations made in Mr. Davis's note of the 7th of July on the ground

that the gentlemen named were accredited in diplomatic capacities to this government; but in your note of the 26th of August I was given to understand that the Government of Canada objected to the appointment of any foreign minister residing at Washington as the third commissioner, and preferred to leave the nomination to the Austrian embassador at London. I thought it due to Her Majesty's Government, which had just proposed for the third commissioner a foreign minister residing at Washington, that I should not regard this as its decision. And in my answer of the 6th of September, I urged that Her Majesty's Government, disregarding the local Canadian influences, should make an effort to agree upon a third commissioner, and thus execute the provisions of the XXIIId article of the treaty.

Although Lord Granville has thought proper to make again officially the proposal which was made tentatively on the 26th of June, yet understanding now the views of this government respecting it, he may think proper, disregarding, as we do, the local influences of those interested in the subject of the controversy, to make an effort to agree upon this third commissioner.

The efforts of this government to carry into execution the provisions of the XXIIId article of the treaty respecting the nomination of the third commissioner by the "President of the United States and Her Britannic Majesty conjointly," have hitherto failed from no fault or negligence on its part.

I close this note by renewing the statement that the President earnestly hopes that the two governments may yet agree upon a third commissioner. To secure this he is willing to waive, if an agreement can be come to, any and all questions as to the time within which the joint nomination should be made, or as to the respective efforts of the two governments in this respect.

I have the honor, &c.,

HAMILTON FISH.

No. 12.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *October* 4, 1873.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, relative to the appointment of a third commissioner for the commission which is to meet at Halifax in accordance with the treaty of May 8, 1871, and I shall not fail to forward a copy of it to Earl Granville, by the first opportunity.

Although it contains some observations in which I cannot entirely acquiesce, it would not in my opinion be conducive to any useful end to enter upon their discussion, nor would it be likely to contribute to the attainment of the object which both governments have had in view, namely, the appointment of a third commissioner by "Her Britannic Majesty and the President of the United States conjointly."

I must, however, be allowed to repeat my conviction that Her Majesty's Government has had as much at heart as that of the United States, and has used its best efforts, to carry out the provisions of the treaty in this respect, as it has already proved its readiness to fulfill, and has fulfilled at the earliest possible moment, others of equal importance. If both governments have so far failed with regard to the selec-

tion of a third commissioner for the fisheries commission, it is because each of them has found it impossible to point out a person who is acceptable to the other. In this respect Her Majesty's Government cannot be accused of negligence any more than the Government of the United States.

I have the honor, &c.,

EDWD. THORNTON.

No. 13.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *October* 24, 1873.

SIR: On the receipt of your note of the 30th ultimo, I forwarded a telegram to Earl Granville, in which I informed him that you had officially stated to me that the proposal which I had been again instructed to make to you, that the British and American ministers at the Hague should be authorized to see if they could not agree upon some Dutch gentleman who would be acceptable to both governments to act as third commissioner under the XXIIId article of the treaty of Washington, could not be accepted, because it varied from the provisions of the treaty and would require a new treaty.

I have now the honor to state to you, in compliance with an instruction contained in a dispatch which I received from Earl Granville yesterday, that Her Majesty's Government is unable to perceive in what manner the treaty would have been departed from by the two ministers recommending to their respective governments a person in their judgment suitable for the appointment of third commissioner; for the appointment would not have been made by the ministers, but by the two governments, in accordance with the strict letter of the treaty, if they had approved the recommendation of the ministers.

I am also instructed to state that the further suggestion that, although the three months had expired, the two governments might still agree upon a third commissioner, appears to Her Majesty's Government to be, on the contrary, wholly inconsistent with the letter of the treaty, which provided that if the third commissioner should not have been named within a period of three months from the date of the article taking effect, the nomination should then rest with the representative of the Emperor of Austria and King of Hungary in London.

Earl Granville has, therefore, directed me to suggest to you that an agreement should be come to on an identic note to the Austrian Government, to be presented by the representatives of the two countries at Vienna, requesting that government to authorize its ambassador to proceed with the nomination.

I have the honor, &c.

EDWD. THORNTON.

No. 14.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, October 25, 1873.

SIR: I have the honor to acknowledge the reception of your note of the 24th instant, wherein you state that you had on the 30th ultimo

informed Lord Granville by the telegraph that "I had officially stated to you that the proposal which you had been again instructed to make to me, that the American and British ministers at the Hague should be authorized to see if they could not agree upon some Dutch gentleman who would be acceptable to both governments to act as third commissioner under the XXIIId article of the treaty of Washington, could not be accepted, because it varied from the provisions of the treaty, and would require a new treaty."

You further state, in compliance with an instruction received from Earl Granville on the day preceding the date of your note, "that Her Majesty's Government is unable to perceive in what manner the treaty would have been departed from by the two ministers recommending to their respective governments a person in their judgment suitable for the appointment of third commissioner; for the appointment could not have been made by the ministers, but by the two governments, in accordance with the strict letter of the treaty, if they had approved the recommendation of the ministers."

You also state that "the further suggestion, that although the three months had expired, the two governments might agree upon a third commissioner, appears to Her Majesty's Government to be wholly inconsistent with the letter of the treaty, which provided that if the third commissioner should not have been named within a period of three months from the date of the article taking effect, the nomination should then rest with the representative of the Emperor of Austria and King of Hungary in London. That therefore Earl Granville had directed you to suggest to me that an agreement should be come to on an identic note to the Austrian Government, to be presented by the representatives of the two countries at Vienna, requesting that government to authorize its ambassador to proceed with the nomination."

I regret to learn that Her Majesty's Government take the view that it is not competent to the two governments by mutual consent to exercise the power of joint nomination which the treaty indicated, even though the three months within which its exercise was intended to have been attempted have elapsed. Notwithstanding this expression, and with all the respect which is so justly due and which I invariably defer to a deliberately expressed opinion from the Government of Great Britain, I fail to see that any violation of the spirit of the treaty can be found in the present exercise of a power of appointment which admittedly might have been exercised before the first day of the present month.

No party can be prejudiced thereby, and there is no party who can in any event take exception to the appointment which the two powers, sole parties to the treaty, may think proper to make.

If it be said that the letter of the treaty is inconsistent with such action, and that the letter rather than the spirit of the treaty is to be observed, it follows that a vested right of appointment accrued on the first day of the present month, in the representative at London of His Majesty the Emperor of Austria and King of Hungary, to be exercised by him independently of any request from the two powers parties to the treaty, or of any authorization or permission of his sovereign; a conclusion equally at variance with the suggestion in your note of yesterday, that an identic note be presented to the Austrian Government, requesting it to authorize its ambassador to proceed with the nomination; and with the view entertained by this government, of the right of that ambassador under the treaty.

The reference in your note of yesterday to the proposal of Her Majesty's

Government, to authorize the ministers of the two governments at the Hague to see if they could not agree upon some Dutch gentleman to act as third commissioner, presents that proposal differently from the form in which it was understood from your note of the 24th of September, in which it was stated that "Her Majesty's Government proposed that the ministers of the United States and of Her Majesty at the Hague should be authorized to see if they could not agree upon some Dutch gentleman to act as third commissioner, who would be acceptable to both governments."

Premising that neither the letter nor the spirit of the treaty limited the selection of the third commissioner to a "Dutch gentleman," I failed to see in the proposal to clothe the two ministers at the Hague with authority to agree upon a third person, as I had also failed to suspect from the conversation and oral discussion of the same subject which had taken place between us at a previous date, that it was contemplated, as is now intimated, that the ministers at the Hague were to be limited to making a recommendation of a third commissioner. I am still unable to see that the proposal as communicated implied such limitation. But regarding it as having the intent which your note assigns to it, I must recall the date of the formal presentation of the proposal.

Your note submitting it bears date at Catskill Station, September 24, and was received at this department on the 26th of that month, inadvertently stated as the 27th in my note of the 30th ultimo. According to the views of Her Majesty's Government as represented in your note of yesterday, it would be wholly inconsistent with the letter of the treaty for the two governments to exercise the power of concurrent appointment except within the period of three months from the date of the article taking effect.

The article took effect on the 1st day of July; the three months consequently expired on the 30th day of September. There were therefore four days allotted for the consideration and decision by the President of the proposal of Her Majesty's Government and for the transmission of instructions to the minister of the United States at the Hague for subsequent conference and agreement between him and the British minister, for their respective reports to be transmitted to their two governments, and for the subsequent concurrent action of the two governments upon their joint recommendation.

This was at a season of the year when you, as well as most of the officers of the government, were understood to be absent from Washington, and a reply to your note of the 24th September, if dispatched by the mail of the day succeeding its reception, could not have been received by you at Catskill Station until the 29th of September, leaving but one day for the carrying out of the proposal of Her Majesty's Government.

I shall not now repeat the appreciation which on a previous occasion I indicated as entertained by this government of the utter inequality of position which it would occupy with respect to that of Great Britain under the proposed arrangement and of the disadvantage at which the proposal, if accepted, would place it. The impossibility of reaching a conclusion upon a proposal of this nature, in the light in which it is now represented, and of instructing the two ministers, and obtaining and acting upon their recommendation within the few hours intervening before the expiration of the three months, made incapable of a practical result the only effort of Her Majesty's Government to comply with the provisions of the treaty whereby it was agreed that the third

commissioner should be appointed by Her Majesty and the President conjointly.

Being unable to perceive that any right of nomination has passed beyond the control of the two governments, and believing that both the letter and spirit of the treaty intended that it should be exercised by them concurrently, and not be delegated either by one or by both, I still entertain the hope that an effort may be made by Her Majesty's Government to agree upon a third commissioner in the spirit of the treaty, and by the concurrent appointment of the two governments.

I have the honor, &c.,

HAMILTON FISH.

No. 15.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *October* 27, 1873.

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant, relative to the appointment of a person to act as third commissioner on the Fisheries Commission provided for by the XXIIId article of the treaty of 8th May, 1871. I shall not fail to forward a copy of this note to Earl Granville.

I regret to observe that you still consider that the proposal which I made to you on the 26th of June last, under Earl Granville's instructions, was not official. I certainly had supposed that you had received it as bearing that character when I informed you that his lordship had desired me to make it; and this supposition was confirmed by your statement that, although the proposition did not strike you favorably, you would not either accept or decline it until you had an opportunity of conferring with the President.

The proposal at that time was the same as that conveyed in my note to Mr. Bancroft Davis, of the 24th ultimo, namely, that the ministers of the United States and of Her Majesty at the Hague should be authorized to see if they could not agree upon some Dutch gentleman to act as third commissioner who would be acceptable to both governments.

The insertion of the last sentence indicates that the person proposed by the two ministers could have been regarded only as a recommendation on their part, for it was only in the case of his being acceptable to both governments that he would have been appointed to act as third commissioner.

The identic note to the Austrian Government, upon the terms of which Earl Granville desired me to suggest to you that we should agree, would be, as I understand it, for the purpose of communicating to the Austrian ambassador in London the wish of the Governments of the United States and of Great Britain that he should proceed to the nomination of the third commissioner, in accordance with the terms of the treaty. Without such a communication, his excellency could hardly be expected to be acquainted with the contents of the treaty, nor to know the date at which the three months expired, or the fact that, unhappily, the two governments have been unable to agree upon a third commissioner within those three months, as provided by the treaty.

I have the honor, &c.,

EDW'D THORNTON.

No. 16.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *December* 2, 1873.

SIR: I have the honor to inform you that I transmitted to Earl Granville a copy of your note of the 25th ultimo, in which you stated that for the reasons mentioned therein you still entertained the hope that an effort might be made by Her Majesty's Government to agree with that of the United States upon a third commissioner for the Fisheries Commission in the spirit of the treaty of Washington, and by the concurrent appointment of the two governments.

In reply I have been instructed by Earl Granville to assure you that if it had been possible Her Majesty's Government would have been glad to have met the views of the Government of the United States in this matter; but that after consultation with the proper law-officers of the crown, it is of opinion that the terms of the XXIIId article of the treaty of Washington are distinct and peremptory, and that the appointment of the third commissioner now devolves upon the Austrian ambassador in London. Her Majesty's Government, concurring with the law-officers, does not think that the interpretation of the treaty given in your note above mentioned can be maintained, nor does it understand how a third commissioner can be appointed conjointly by the two governments without a new treaty, the article being explicit as to his appointment being left to the Austrian representative in London, if not made within a certain date.

Her Majesty's Government therefore considers that the Government of the Dominion of Canada might complain if the nomination were not made as provided for by the treaty; and that if the arbitrator were to give a decision unfavorable to Canada, great discontent might arise in consequence in the colony.

Earl Granville has therefore desired me to express the hope of Her Majesty's Government that you will see the expediency of agreeing to an identic note to be addressed to the Austrian Government by the representatives of the United States and of Great Britain at Vienna, requesting that the Austrian ambassador in London may be authorized to proceed with the nomination of the third commissioner.

I have the honor, &c.,

EDWD. THORNTON.

No. 17.

Sir Edward Thornton to Mr. Cadwalader.

BRITISH LEGATION,
Washington, April 21, 1875.

SIR: In compliance with an instruction which I have received from the Earl of Derby, I have the honor to inform you that, as the Senate of the United States has decided not to sanction the ratification of the treaty of reciprocity submitted to it by the President during its recent session, Her Majesty's Government now deems it desirable that the arbitration proceedings under the XXIId article of the treaty of Washington which were delayed, pending the result of the negotiations for the reciprocity treaty, should be at once resumed, and that no time

should be lost in proceeding to ascertain the compensation due to Canada for the concession of the fishery rights to citizens of the United States.

I have the honor, therefore, to propose that steps should at once be taken for the constitution of the commission in accordance with Articles XXII to XXV of the treaty of Washington, and to suggest the expediency of agreeing to an identic note to be addressed to the Austrian Government by the representatives of the United States and of Great Britain at Vienna, requesting that the Austrian ambassador in London may be authorized to proceed with the nomination of the third commissioner in the manner laid down in the XXIIId article of the treaty.

I have the honor, &c.,

EDWARD THORNTON.

No. 18.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, May 8, 1876.

SIR: Upon the receipt of your note of the 19th July ultimo, informing me that Her Majesty's Government had appointed Sir Alexander T. Galt to be British commissioner, and Mr. Francis Clare Ford to be British agent, to the commission to meet at Halifax, in accordance with the XXIIId article of the treaty of Washington, and requesting to be furnished with the names of the persons whom the Government of the United States proposed to appoint in similar capacities on its part, I had the honor to inform you by my note of the 30th July ultimo that the person designated for commissioner on the part of the United States was absent from the country, and that it was desired to consult him before a formal notice was given of his appointment.

You will remember that at a previous interview I had informally and confidentially mentioned to you that the Hon. John H. Clifford, of Massachusetts, had accepted the position of commissioner on the part of the United States. In the interval occupied by the negotiations relating to the project for a reciprocity convention, it had become doubtful whether Mr. Clifford would finally be able to assume his duties. He afterward returned to the United States, and has lately died.

I have now the honor to inform you that the Hon. Ensign H. Kellogg, of Massachusetts, has been appointed the commissioner, and the Hon. Dwight Foster, of Massachusetts, the agent, on the part of the United States, to the commission to meet at Halifax, pursuant to the XXIIId article of the treaty of Washington.

In your note of April 21, 1875, it was suggested that, as the Senate had failed to approve the project for a reciprocity treaty submitted by your government, the commission should be organized in accordance with Articles XXIII to XXV of the treaty of Washington, and that steps be taken to agree upon an identic note to be addressed to the Austrian Government, by the representatives of the United States and Great Britain at Vienna, that the Austrian ambassador at London might be authorized to proceed with the nomination of a third commissioner in the manner provided for in the XXIIId article of the treaty.

In reply to these suggestions, and as reference has also been made to the delay which has occurred in the assembling of the commission, I have the honor to remind you that by Article XXIII of the treaty of Washington, Articles XVIII to XXV did not go into effect until the

necessary legislation was obtained, which date, pursuant to the protocol of June 7, 1873, was fixed on the 1st day of July, 1873.

For some weeks, indeed some months, prior to that date, being impressed with the advisability of a nomination by the agreement of the two governments, I had communicated to you the wish of this government and the readiness of the President to make the effort to unite with Her Majesty in the conjoint nomination of the third commissioner, and stated that if Her Majesty's Government would name some persons the United States would consider the names, with a desire to reach an agreement; and had it been intimated that it would be agreeable that the United States should suggest names, such would readily have been done.

During this time and prior to the 1st of July, although frequent reference was made to the matter and its importance, and while your government was possessed of the views of the United States, you informed me that you were without instructions.

Upon the 7th of July, immediately after these articles had become effective, the Acting Secretary of State addressed you a note as to the importance of an agreement, and suggested the names of a number of persons, either of whom, it was stated, would be acceptable to the United States. The substance of this note, as you informed me, was telegraphed to your government on the 11th of July.

I had already expressed to you regret that Her Majesty's Government had not taken steps to reach an agreement, and requested that some names might be proposed on its part, but received no response until the 26th of August, when you informed me that the government of Canada strongly objected to the appointment of the persons who had been named by the United States, without assigning any reason therefor, and preferred "to resort to the alternative provided by the treaty, namely, to leave the nomination to the Austrian ambassador at London."

After a delay, therefore, in replying to the note of July 7 of some fifty days out of the three months provided for by the treaty, Her Majesty's Government seemed to have remitted the matter to Canada, and practically to have abandoned an effort to reach a conjoint nomination as contemplated by the treaty because Canada preferred to resort to what is termed the alternative provided by the treaty.

With the exception of the proposal of a single name, which you had previously informed your government, after inquiry, would be unacceptable to the United States, and a proposal that a nomination might be reached in a way foreign to the treaty (through the ambassadors of the respective countries at the Hague), no steps were taken on the part of Great Britain to propose names or to meet the efforts of the United States in the direction provided by the treaty; and after the expiration of the three months, although the United States was still willing to endeavor to reach an agreement, your government declined to consider any further steps to that end.

Soon afterward the question of a reciprocity treaty arose, and in the month of July, 1874, a *projet* of such treaty having been presented, I was informed that Her Majesty's Government desired to await the final result in reference to that instrument; and the matter so rested, until the receipt of your suggestion of an identic note, to which I have referred.

I make reference to this subject, not to prolong a discussion, but because it seems proper to show how and why much delay has occurred, as well as to recall the opinion which the Government of the United States has always entertained that the XXIIId article of the treaty of Washington provided for the nomination of a third commissioner by the two governments, and demanded at least an actual and *bona fide* effort

by them to reach an agreement, and contemplated a nomination by the Austrian ambassador at London, not as an alternative to be chosen at will, but only to be resorted to when a real effort to reach an agreement had been made by both parties and had proved entirely unavailing.

While of this opinion and while believing not only that it would have been more satisfactory had a nomination been agreed on by the two governments, but that such was demanded by the spirit of the treaty, the United States does not propose to interpose obstacles in carrying out these articles of the treaty on this ground, and I shall be ready at any time to confer with you as to a form of an identic note to be addressed to the Austrian Government, in order to obtain the requisite permission that the representative of Austria-Hungary at London may proceed to make an appointment pursuant to Article XXIII of the treaty of Washington. * * *

I have the honor, &c.,

HAMILTON FISH.

No. 19.

Form of identic note.

[Received from the British minister February 8, 1877.]

M. LE. MINISTRE: Articles XVIII, XIX, and XXI of the treaty of Washington, of the 8th of May, 1871, of which I have the honor herewith to inclose a copy, provide for certain privileges in respect to fisheries and remissions of customs duties to be granted by Great Britain and the United States respectively; and in the XXIId and XXIIId articles of the treaty it is further provided that * * * the period of three months, specified in the article above quoted, having elapsed, it has become necessary to take steps for the appointment of the third commissioner in accordance with its provisions, and with this view I have received the instructions of Her Majesty's Government to request you to invite His Imperial and Royal Majesty to be graciously pleased to instruct his ambassador at London to undertake the duty of selecting some gentleman properly qualified to act in the capacity of third commissioner.

In consideration of the fact that the proceedings at the Halifax Commission will be conducted in the English language, and that any evidence, documents, or oral testimony will be also in English, it appears to Her Majesty's Government to be a necessary qualification that the third commissioner should possess an accurate knowledge of that language.

The commissioner appointed by Her Britannic Majesty is Sir Alexander T. Galt, K. C. B., &c., &c., and the commissioner appointed by the President of the United States is the Hon. Ensign H. Kellogg.

The arrangements for the constitution of the commission being otherwise complete, I have the honor to suggest that it would be desirable that the third commissioner should be named by the representative at London of His Imperial and Royal Majesty as soon as may be convenient.

I have further the honor to inform you that my United States colleague has received instructions to act conjointly with me in making this request, and he will address to you a note in similar terms to that which I have now the honor to present.

I have, &c.

No. 20.

Mr. Evarts to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, March 20, 1877.

SIR: Referring to the matter of the appointment of a third commissioner for the commission which is to meet at Halifax, under the XXIIId article of the treaty of Washington, I have the honor to inform you that Mr. Pierrepont, the representative of the United States at London, has informed me, by a dispatch under date of March 6, that upon the 1st March, a form of identic note was agreed upon between himself and Lord Derby to be addressed to Count Beust, the Austrian ambassador at London, pursuant to which an appointment has been made of Mr. Delfosse, the envoy extraordinary and minister plenipotentiary of the King of the Belgians at Washington.

Mr. Pierrepont inclosed a copy of a note addressed to him by Count Beust, informing him that in conformity with this article of the treaty he had named Mr. Delfosse, and had also given notice thereof to the Government of Her Majesty the Queen, and to the Belgian legation at London.

I have this day addressed Mr. Delfosse, informing him of the substance of Mr. Pierrepont's dispatch and forwarding to him a copy of the note addressed by Count Beust to Mr. Pierrepont, and should you deem it necessary that any other notice of the appointment should be conveyed to Mr. Delfosse, I shall be happy to meet you for that purpose.

I have the honor, &c.,

WM. M. EVARTS.

No. 21.

Sir Edward Thornton to Mr. Evarts.

WASHINGTON, *March* 21, 1877.

SIR: I have the honor to acknowledge the receipt of and to thank you for your note of yesterday's date, informing me of the appointment of Mr. Delfosse as third commissioner to the commission which is to meet at Halifax, under the XXIIId article of the treaty of Washington.

I shall have the honor of calling upon you at the Department of State to-morrow, and of conferring with you with regard to any further arrangements which it may be necessary to make, respecting the above-mentioned commission.

I have the honor, &c.,

EDWARD THORNTON.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 45.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A copy of a report of the Chief of Ordnance in relation to the clerical force in his office, and recommending an additional appropriation to enable him to employ an additional force therein.

MARCH 22, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, March 21, 1878.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives, for the Committee on Appropriations, a copy of a report of the Chief of Ordnance in relation to the clerical force of his office, stating that, since its reduction in grades and number, it is inadequate to perform the necessary business of the office, and that he has estimated this year for six clerks in addition to the present number to bring it to what it was in 1876.

The appropriations necessary to this object are respectfully recommended.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, March 19, 1878.

SIR: For the fiscal year ended June 30, 1876, and prior thereto, there were allowed and employed in this office the following clerks, viz:

1 chief clerk,
3 of class four,
3 of class three,
3 of class two,
8 of class one,

and this force was barely sufficient to transact the current business promptly and efficiently. Since that time the force has been twice reduced in grades and numbers, and as it stands now it is wholly insufficient to transact the business devolved upon this office by law and to meet the constant calls by Congress and the executive departments for reports and information. As a consequence, many important books

necessary to be kept for constant reference, and invaluable as records, have been discontinued, and others may have to be unless a sufficient force can be employed.

In the property-return division there remain over four thousand property-accounts from the Army unexamined at this time, and this number is increasing every quarter, to the detriment of the officers responsible for ordnance property, and often to the pecuniary loss of the United States, and the work in the other divisions is in a similar state of backwardness.

I have estimated this year for 6 clerks in addition to the present clerical force, viz:

2 of class four,
1 of class three,
1 of class two, and
2 of class one,

to bring the force to what it was in 1876, and this number I earnestly recommend as absolutely necessary.

This office is divided into three divisions, each of great importance and each requiring clerks in charge of great experience and knowledge. The chiefs of these divisions were, and should be now, graded and paid as fourth-class clerks.

I have the honor to invite your attention to the foregoing statement, and request that the matter be laid before Congress with your recommendation for the necessary appropriation in the case.

Very respectfully, your obedient servant,

S. V. BENÉT,
Brig. Gen., Chief of Ordnance.

The Hon. SECRETARY OF WAR.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 46.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A communication from the Chief of Engineers, recommending an appropriation for continuing examinations in connection with the construction of jetties at the South Pass of the Mississippi River.

MARCH 22, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, March 21, 1878.

The Secretary of War has the honor to transmit to the Senate a communication from the Chief of Engineers dated March 16, 1878, recommending that an appropriation be made for continuing the examinations required by section 4 of the act of March 3, 1875 (18 Stat., 463–6), in connection with the construction of jetties at the South Pass of the Mississippi River. The necessity for this appropriation is apparent when it is considered that payments to Mr. James B. Eads can only be made upon the report of the officer detailed to examine the works.

GEO. W. MCCRARY,
Secretary of War.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., March 16, 1878.

SIR: On January 4, 1878, upon the recommendation of this office, the sum of $3,500 was allotted from the appropriation for examinations and surveys and contingencies of rivers and harbors to enable the engineer officer detailed for the duty to continue the examinations in regard to depth of water and width of channel required by Congress in connection with the construction of jetties at the South Pass, Mississippi River, to March 31, 1878, in the expectation that before that period Congress would have made the necessary appropriation for the work. The allotment above mentioned will soon be exhausted, and it is necessary that funds for continuing the examinations be provided at an early day.

The estimate for the fiscal year ending June 30, 1878, was $15,000. (Book of Estimates for 1878–1879, page 22.)

It is respectfully suggested that the attention of Congress be called to the necessity for making the appropriation referred to, in order that the examinations in connection with the jetties may not be discontinued.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

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45TH CONGRESS, 2d Session. } SENATE. { Ex. DOC. No. 47.

LETTER

FROM

THE SECRETARY OF WAR,

RECOMMENDING

The repeal of section 1233 of the Revised Statutes, relating to company cooks in the Army.

MARCH 26, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, March 25, 1878.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives copy of a communication from the Board on Army Cooking, recommending the repeal or amendment of section 1233 of the Revised Statutes, with indorsements thereon of the Adjutant-General, Commissary-General of Subsistence, and the Surgeon-General.

Concurring in the views expressed by these officers, the repeal of section 1233 of the Revised Statutes is respectfully recommended.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT
of the United States Senate.

OMAHA, NEBR., *February 27, 1878.*

GENERAL: The undersigned, members of the board instituted by General Orders, No. 117, series 1877, from your office, have received several communications from officers of the line of the Army, recommending that section 9 of the act of Congress approved March 3, 1863, now section 1233, Revised Statutes of the United States, be repealed or amended so as to give company commanders a larger discretion in the detail of company cooks.

The present law of Congress directs that the "cooks shall be detailed in turn, * * * who shall serve ten days each." The detail is therefore made without regard to the capacity of the cooks, and the result is the food is, as a general rule, miserably cooked, while the man is in the kitchen long enough to ruin his clothing, without extra pay to replace it. On the other hand, if a capable man is detailed and kept in longer

than ten days, there is a breach of the law, while the company loses the benefit of the man's experience.

The board, fully concurring in these recommendations, and deeming the matter of sufficient importance, in advance of their report, most respectfully recommend that the law be so amended as to make the detail of the chief cook permanent by the company commander, or as long as, in his discretion, the interests of his company are served, and that the assistant cook be detailed for a period not to exceed thirty days.

Very respectfully, your obedient servants,

CHARLES PAGE,
Surgeon, U. S. A., President.
JOHN P. HAWKINS,
Commissary Subsistence, U. S. A., Member.
FREDERICK MEARS,
Captain Ninth Infantry, Recorder.

The ADJUTANT-GENERAL,
Washington, D. C.

HEADQUARTERS OF THE ARMY,
Washington, March 9, 1878.

Respectfully submitted to the Secretary of War, concurring in the recommendation so far as repealing the present statute goes. I should prefer to leave so small a matter to the discretion of the commanding officer.

It is undoubtedly very essential to the health and comfort of the men that their food should be well and properly cooked. The present is the very best system, in my judgment, that could be devised to *prevent this from being attained.*

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL SUBSISTENCE,
March 14, 1878.

Respectfully returned to the honorable Secretary of War.

I am of the opinion that the section referred to, viz, 1233, Revised Statutes, should be repealed, and the detail of cooks left to post and company commanders, under Army regulation, so long as men are not enlisted as cooks.

In this connection, I desire to invite attention to the following extract from my annual report for the fiscal year ending June 30, 1877:

"Attention is respectfully invited to the following extracts from a communication made to your predecessor on November 8, 1876, with the view that the attention of Congress may be invited to such of the recommendations as meet your approval:"

> I am of the opinion that the efficiency of the Army would be increased and desertions lessened were a cook enlisted for each company, with extra pay, say, $4 in excess of the pay of a private, and schools for the instruction of cooks established at the recruiting-depots at Fort Columbus, N. Y., and Columbus Barracks, Ohio.

* * * * * * *

I would respectfully suggest that these papers be referred to the Surgeon-General.

R. MACFEELY,
Commissary-General Subsistence.

SURGEON-GENERAL'S OFFICE,
March 21, 1878.

Respectfully returned to the honorable Secretary of War.

Section 1233, Revised Statutes, should be repealed.

In a report from this office dated April 25, 1875, and published by authority of the honorable Secretary of War May 1, 1875, in circular No. 8, Surgeon-General's Office, on the hygiene of the Army, &c., it was suggested, in connection with this subject, among other recommendations—

> That the chief cook of each company shall be a permanent detail, and shall receive extra-duty pay; that they shall be specially enlisted for that purpose, and that a school for the instruction of cooks shall be established at the principal recruiting depots; that a manual of instructions for Army cooks be prepared and issued by the Subsistence Department, which shall give diet-tables and modes of preparing food suited to the various stations, climates, and seasons.

The above recommendations are renewed, and it is believed, if adopted, will much improve the health, comfort, and contentment of the *enlisted men* of the Army.

J. K. BARNES,
Surgeon-General.

[GENERAL ORDERS, No. 117.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, December 20, 1877.

I. By direction of the Secretary of War, a board, to consist of Surgeon Charles Page, United States Army; Maj. John P. Hawkins, Commissary of Subsistence; Capt. Frederick Mears, Ninth Infantry, is appointed, to meet at Omaha, Nebr., January 24, 1878, or as soon thereafter as practicable, to make experiments in Army cooking, and prepare a manual for the use of Army cooks.

The junior member will record the proceedings.

II. Officers of the Army are invited to forward to the board, in writing, such information and suggestions on the subject of Army cooking as they may desire to present for its consideration, and the Subsistence Department is authorized to expend such quantities of subsistence supplies as may be necessary for the board in the performance of the duty assigned it.

By command of General Sherman.

E. D. TOWNSEND,
Adjutant-General.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 48.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In answer to a Senate resolution of February 14, 1878, *information in relation to the "Ward" claims and the claim of Charles E. Hill.*

MARCH 28, 1878.—Read, ordered to lie on the table, and be printed.

To the Senate of the United States:

In answer to the Senate's resolution of the 14th ultimo, requesting to be furnished with a copy of correspondence between the Government of the United States and that of China respecting the "Ward" claims, and the claim of Charles E. Hill, I herewith submit a letter from the Secretary of State together with its accompanying papers.

R. B. HAYES.

WASHINGTON, D. C., *March* 27, 1878.

DEPARTMENT OF STATE,
Washington, March 27, 1878.

The Secretary of State, to whom was referred the Senate's resolution of the 14th ultimo, requesting that "any correspondence between our Government and that of China relating to the 'Ward' claims, and claim of Charles E. Hill, for the charter of the steamer Keor Jeor," be communicated to that body, has the honor to submit herewith a copy of the correspondence referred to.

WM. M. EVARTS.

To the PRESIDENT.

List of accompanying papers.

No. 1. Mr. Seward to Mr. Hale, No. 536, April 18, 1872.
No. 2. Mr. Low to Mr. Fish, No. 151, May 4, 1872.
No. 3. Mr. Hunter to Mr. Low, No. 96, August 20, 1872.
No. 4. Mr. Fish to Mr. Avery, No. 19, March 5, 1875.
No. 5. Mr. Seward to Mr. Fish, No. 107, July 11, 1876.
No. 6. Same to same, No. 108, July 11, 1876.
No. 7. Mr. Hunter to Mr. Seward, No. 77, September 7, 1876.
No. 8. Mr. Seward to Mr. Fish, No. 114, July 25, 1876.

No. 9. Same to same, No. 119, July 29, 1876.
No. 10. Mr. Hunter to Mr. Seward, No. 83, September 21, 1876.
No. 11. Mr. Seward to Mr. Fish, No. 142, October 16, 1876.
No. 12. Same to same, No. 149, October 27, 1876.
No. 13. Mr. Fish to Mr. Seward, No. 96, December 19, 1876.
No. 14. Mr. Seward to Mr. Fish, No. 190, January 9, 1877.
No. 15. Mr. Evarts to Mr. Seward, No. 129, March 17, 1877.
No. 16. Mr. Seward to Mr. Fish, No. 204, February 12, 1877.
No. 17. Same to same, No. 205, March 6, 1877.
No. 18. Mr. Seward to Mr. Evarts, No. 234, May 7, 1877.
No. 19. Mr. F. W. Seward to Mr. G. F. Seward, No. 160, June 30, 1877.
No. 20. Mr. Seward to Mr. Evarts, No. 249, May 17, 1877.
No. 21. Mr. Evarts to Mr. Seward, No. 171, July 28, 1877.
No. 22. Mr. Seward to Mr. Evarts, No. 266, June 7, 1877.
No. 23. Same to same, No. 267, June 8, 1877.
No. 24. Mr. F. W. Seward to Mr. G. F. Seward, No. 174, August 3, 1877.
No. 25. Mr. Seward to Mr. Evarts, No. 286, June 30, 1877.
No. 26. Same to same, No. 290, July 7, 1877.
No. 27. Mr. F. W. Seward to Mr. G. F. Seward, No. 180, August 27, 1877.
No. 28. Mr. Seward to Mr. Evarts, No. 307, July 26, 1877.
No. 29. Same to same, No. 324, August 11, 1877.
No. 30. Mr. F. W. Seward to Mr. G. F. Seward, No. 192, October 13, 1877.
No. 31. Mr. Seward to Mr. Evarts, No. 340, October 9, 1877.
No. 32. Mr. Evarts to Mr. Seward, No. 203, November 26, 1877.
No. 33. Same to same, No. 206, January 10, 1878.
No. 34. Mr. Seward to Mr. Evarts, No. 352, December 6, 1877.
No. 35. Mr. Evarts to Mr. Seward, No. 210, February 19, 1878.
No. 36. Mr. Seward to Mr. Evarts, No. 358, December 12, 1877.
No. 37. Same to same, No. 366, December 24, 1877.
No. 38. Mr. Seward to Mr. Evarts, No. 368, December 28, 1877.
No. 39. Same to same, No. 373, December 29, 1877.
No. 40. Mr. Evarts to Mr. Seward, No. 221, March 20, 1878.
No. 41. Mr. Mitchell to Mr. Evarts, February 14, 1878.
No. 42. Mr. Evarts to Mr. Mitchell, March 13, 1878.
No. 43. Mr. Seward to Mr. Evarts, No. 387, January 23, 1878.

CORRESPONDENCE.

No. 1.

Mr. Seward to Mr. Hale.

No. 536.] UNITED STATES CONSULATE-GENERAL,
Shanghai, April 18, 1872. (Received June 25.)

SIR: I have the honor to hand you herewith copies of two letters, which I have addressed to John F. Twombly, esq., a merchant at this port, in regard to certain claims against the Chinese Government, and against a Chinese official named Woo. The latter are the claims of the estate of General Frederick T. Ward; the former those of various persons who supplied the so-called Ward corps of disciplined Chinese with supplies during the years 1860, 1861, and 1862. Mr. Twombly is the administrator upon the estate of General Ward, and a large claimant against the government, as indicated.

My letters have been addressed to him in response to inquiries made by him. They will offer to those concerned a brief recital of the efforts made by me in their behalf, and at the same time an accurate basis for any future procedure.

I have, &c.,
GEORGE F. SEWARD.

[Inclosure 1 in No. 536.]

Mr. Seward to Mr. Twombly.

No. 3885.] UNITED STATES CONSULATE-GENERAL,
Shanghai, April 2, 1872.

SIR: I have received your letter, dated March 26, asking me to pnt in writing what I know of the history of the claims preferred by the representatives of the estate of General Frederick T. Ward against Woo, Taotai; whether these claims may, in my opinion, be urged against the Chinese Government, and what steps ought to be taken in the interest of all concerned. You ask this information, being interested in the estate as a claimant upon it, and as representing the surviving heirs at law. I have pleasure in complying with your request.

The history of the claims in question is largely shown in that of the general claims against Woo. Having already placed in your hands a statement in regard to the latter, I refer you, in the first place, to that document.

General Ward, when mortally wounded, made a statement to the effect that the Taotai owed to him a large sum of money, viz, 110,000 taels, equal to nearly 150,000 Mexican dollars. Another amount of 30,000 taels, or 40,000 Mexican dollars, he claimed from Yang Taikee, a merchant holding official rank, who appears to have acted as a treasurer of the Ward corps. A copy of the statement will be found attached to this letter.

Mr. Burlingame, named by General Ward as one of his executors, on receiving information of his death and of his desire that he should act in such capacity, sent to me a power of attorney to act in his stead. Admiral Hope in the same manner executed a power in favor of Mr. Edward Cunningham.

Up to this moment I had interested myself in taking care that the property of the estate should not be lost; but, on learning the action taken by Mr. Burlingame and the admiral, I called a meeting of the creditors, and, in conjunction with Mr. Cunningham, advised them to request the consular court, in which I was judge, and which

had jurisdiction in the matters pertaining to the administration of estates, to appoint an administration. Such application was made to the court, and in the absence of any persons of kin to the deceased, and with the accord of all concerned, I appointed Albert L. Freeman, esq., to be said administrator. Mr. Freeman accepted the trust and at once took charge of the affairs of the estate. One of his first acts was to file with the arbitrators, Messrs. Jenkins and Rodgers, of whose appointment I have spoken in the letter above mentioned, the claims of the estate against Woo, Taotai. These gentlemen awarded to the estate the full amount of its claims as may be seen on reference to the award now on file in this office. Woo, as I have said in the letter on the general claims, declined to accept the award. Mr. Freeman then undertook to collect the amount from him directly, but was unsuccessful.

When the second arbitration, referred to in my letter regarding the general claims, was agreed upon, the claim of the estate was again submitted. I append hereto the decision of the arbitrators. They found the evidence on either side, as submitted to them, incomplete and insufficient, and were unable to reach an award. Mr. Freeman resigned his trust in June, 1864, and thenceforward, until your appointment as administrator, I continued to act in that capacity in virtue of my general consular authority. On taking charge of the estate I was at once met by the difficulty that Mr. Henry G. Ward, who had gone to the United States in 1862, with a large amount of funds (£40,000), furnished by Woo to purchase steamers for the government, had neither brought back the vessels, nor rendered evidence of his inability to do so, and complete accounts of the use of the funds given to him. At this time I used such arguments in writing to him, and advised others to do so, as were calculated to procure from him a full report. I found also the claims of the estate against Takee unsettled and in great confusion. After much effort I arranged arbitration with that person which resulted in the closing of all accounts between the estate and him. While this arbitration was going forward the father of General Ward was at work at Peking urging the claims of the estate before Mr. Burlingame, and he in turn placed them before the government. The result was the appointment by the government of Ying (a former Tautai at Shanghai) to take evidence and report to Peking. Upon meeting this officer I had to face the same difficulty that had attended Mr. Freeman when pressing the claims of the estate before Messrs. Hanbury and Cunningham. The accounts from Mr. Henry G. Ward had not come. There was no recourse for me but let the matter rest until they should be received. Up to the time of my departure for America in February, 1867, the matter of the estate remained in the condition indicated above. While at home I visited Mr. Henry G. Ward to procure the desired accounts and evidence. He alleged that the £40,000 was only a part of the sum with which Woo had agreed to provide him, that a portion of it had been expended for munitions of war and returned to China; that he had been obliged, in consequence of the failure of Woo, to make a forced sale of the partly completed vessels; that a heavy loss had been met and that only a reduced amount remained in his hands. He undertook to render accounts and to support them with such evidence of the loss met in the sale of the ships, and of the necessity to sell them, as seemed to me desirable. He was at this time in the last stages of a lingering illness, and the impaired condition of his health afforded an excuse almost sufficient for the failure to forward appropriate accounts. These accounts and the promised evidence carefully prepared by a lawyer and a professional accountant, were at last rendered. I have found no reason to doubt the accuracy of the former and the case made out by Mr. Ward in regard to the necessity which he was under of selling the vessel seems to me a sufficient one. The balance of the funds held by Mr. Henry G. Ward, after the sale of the steamers amounted, according to the statement of his account, to ——— in United States currency, and at the date when the funds were realized to 61,865.79 taels. According to this showing there is a large amount due to the estate from Woo.

After my return from America you were appointed by the court administrator in the estate. This was in May, 1868. In the month of June following, I went with you to Hangchow in order to lay before Woo the accounts rendered by Mr. Henry G. Ward, and to make a further effort in behalf of the general claimants. This visit resulted in nothing. I have related in my letter regarding the general claims the steps taken to secure Mr. Ross Brown's action in regard to them. The affairs of the estate were on the same occasion urged upon him, but the short period of his tenure of the ministership gave him no opportunity to deal with either matter. I have not urged the matters of the estate before Governor Low, being aware that you have placed them fully before him.

From this recital it will be seen that the estate of General Ward has a claim upon Woo, and it will be understood why the claim has not been vigorously urged. Mr. Henry G. Ward's failure to render accounts balked earlier efforts made in behalf of the estate and has thrown a degree of discredit upon the representations since made in behalf of it. That failure should not be allowed, however, to injure innocent persons.

General Ward left no accounts and the evidence that Woo owed to him at the time

of his death the large sum of 110,000 taels rests on the general's dying statement, and on admissions made by Woo to Mr. Freeman, to Messrs. Jenkins and Rodgers, and on the occasion of a visit to Hangchow described in my letter on the general claims. From these admissions the items which contribute to make up the amount can be in great part determined. It would appear that they became due to General Ward as commander of the "ever victorious" force, for pay, and for compensation for the capture of different cities. It would not be difficult to argue that the government is responsble for whatever amounts became due in this way from its agent, Woo, to General Ward.

As to the steps which may now be taken, I may suggest that since the accounts and the desired evidence from Mr. Henry G. Ward are now in hand, it may be well to secure through Governor Low the appointment of commissioners, to sit either here or at Peking, who should have power to pass upon the claims of the estate. Mr. Burlingame succeeded, as I have said, in procuring the appointment of a Chinese officer to examine into the matter. What he did would probably make the further intervention of the legation comparatively easy.

In this connection, and as a commentary upon what I have written and upon the justice of the claims of the estate, at least to indicate that its claims ought to be adjudicated, I append a copy of an official letter from Mr. Burlingame to myself, dated November 21, 1864.

Upon looking over what I have written I see that I have not shown why General Ward's estate should be held responsible foi Mr. Henry G. Ward's execution of the commission to purchase gunboats. An argument might be made perhaps in favor of treating the affairs of the brothers separately. It is not necessary for me to make such an argument, or the opposite one, The fact is that neither Mr. Freeman nor myself chose to raise the question; if you do so it will be your matter.

I may say, moreover, that the money realized from the sale of the steamers has passed into the possession of the heirs of General Ward's estate, and that the claimants against the estate may pursue perhaps into their hands if they care to do so. I shall forward copies of this dispatch to the legation and to the Department of State.

I have the honor to be, sir, your obedient servant,

GEORGE F. SEWARD,
Consul-General.

JOHN T. TWOMBLY, Esq.,
Administrator on the Estate of Gen. Frederick T. Ward, deceased, Shanghai.

[Inclosure 1 in inclosure in No. 536.]

General Ward's dying statement.

The words of General Ward, as immediately written down by us, by his wish, when brought on board Her Majesty's ship "Hardy," mortally wounded at the assault on Tsieka, 9 a. m. on Sunday, the 21st September, 1862.

The Taotai of Shanghai owes me 110,000 taels. The Takee also owes me 30,000 taels—140,000 taels.

I wish my wife to have 50,000 taels, and all remains to be between my brother and sister.

I wish Admiral Sir James Hope and Mr. Burlingame to be my executors.

Witness our hands.

ARCH. G. BAYLE,
Lieutenant and Commander.
JOHN COLTER,
Boatswain.

[Inclosure 2 in inclosure in No. 536.]

GENERAL WARD'S ESTATE *vs.* CHINESE GOVERNMENT AND VICE VERSA.

The undersigned consider that the failure on the part of the administrators of General Ward's estate to produce any accounts or even any explanation or reliable statement of the money furnished by the Chinese Government, and sent to England and the United States by General Ward to be invested in arms and steamers for the government, fatal to the entertainment of any claim of the estate against the government. It is acknowledged money was sent, but it is not proved how much or what has been done with what went forward.

Until it is proved how much money was received for these purposes by General Ward,

and what has been done with the money so received, no claim of the estate can justly be allowed, for it is clearly responsible for the trust.

On the other hand the Taotai Woo produces no satisfactory evidence of debt to the government by General Ward.

Ward's general acknowledgment of the receipt of 270,000 taels may apply to amounts received through a long period, and applied here as well as at home. Unsupported by formal receipt it goes for nothing, merely serving to confuse the matter.

Amid such irregularity and confusion and almost total absence of accounts and receipts, the undersigned think that the only safe conclusion is that neither party substantiates a claim on the other, and that matters should be allowed to remain as they stand, the claims offsetting each other.

EDWARD CUNNINGHAM.
THOMAS HANBURY.

SHANGHAI, *December* 26, 1863.

[Inclosure 3 to inclosure in No. 536.]

Mr. Burlingame to Mr. Seward.

LEGATION OF THE UNITED STATES,
Pekin, November 21, 1864.

SIR: After a careful examination of the report made by Messrs. Hayes and Loniuro, as arbitrators in the matter in issue between Takee, so called, and the representatives of the estate of General Ward, I am constrained to confirm and approve your action in relation thereto. I should have been pleased if all my views, as expressed in my correspondence with the Chinese Government, had been confirmed by the result of the arbitration, but it appears there was evidence of which I was not aware, and of which you were ignorant (for you sustained the claims before the arbitrators with the same arguments used by me here) brought before the arbitrators of such a character as to abate somewhat the expectations of the friends of the estate. That arbitration, if I understand, settles but a portion of the claim; there yet remains the large part against Woo. Be pleased to do all you can to collect it. I have done all I can here, and the Chinese Government has done what it could. With myself, it believed in the justice of the claims and appointed a man, as you know, to aid in their enforcement. That man is now in Shanghai; the friends of the estate, with all the evidence, are there also.

It would seem, therefore that there could not be much delay. If you shall find the parties not disposed to meet our just expectations then the matter may be referred for my diplomatic action.

I am, sir, your obedient servant,

ANSON BURLINGAME,

GEORGE F. SEWARD, Esq.,.
Consul-General, Shanghai.

[Inclosure 2 in No. 536.]

Mr. Seward to Mr. Twombly.

No. 3775.] UNITED STATES CONSULATE-GENERAL,
Shanghai, March 22, 1872.

SIR: I have received your letter asking for information about the Ward claims, so-called, and my action upon them. I will answer your questions as they are put.

What are the so-called Ward claims?

The Ward claims are of three kinds:

a—The claims of the estate of Gen. Frederick T. Ward upon Woo, Taotai, a commissioner of the Chinese Government, &c., &c.

b—The claims of the same estate upon Takee, a Chinese official.

c—The claims of various persons upon Woo, Taotai, and commissioner for arms, munitions of war, provisions, charters of steamers, &c., &c.

I shall deal in this letter with the claims indicated in paragraph *c*.

The *a* claims remain to be spoken of in another place. The *b* claims have been long since settled.

In order to understand the nature of the claims it is necessary to inquire, first, *a* who Gen. F. T. Ward was; *b* what the so-called Ward corps was; *c* who Woo, Taotai was; *d* what were the relations of these one to another and to the Imperial Government of China.

General F. J. Ward was a citizen of the United States. To the best of my knowledge and belief he arrived in Shanghai in the winter of 1860–'61. He was then about thirty years of age, small, well-knit, and active; shrewd, adventuresome, and fearless. He was wounded on the 21st of September, 1862, and died after a few hours.

The Ward's Corps, at the time of General Ward's death, was a Chinese force of about three thousand men, who were natives, officered by about seventy-five foreigners. They were engaged in defending the country around Shanghai against the Taiping rebels, and in recovering territory from them where this was practicable.

Woo was the governor of the Shanghai district, and appears to have been charged with the immediate control of all military affairs at or near Shanghai. When the Ward Corps passed from his control he was made a commissioner to settle up all outstanding claims on account of the force.

Ward was the author of the force. He commenced by hiring, under the direction of Woo, and at the expense of funds controlled by Woo, a number of natives of the Philippine Islands, with whom he did some fighting. He soon, however, disbanded this force, and engaged Chinese instead. He was successful in handling the latter, and increased their number from time to time until he had raised the corps to the strength that I have mentioned. Whether he held a commission from the imperial government I do not know, but whether so or not he was in its employment or pay.

After General Ward died Henry A. Burgevine succeeded to the command, which he retained until some time in January, 1863. Burgevine, like Ward, was an American. His relations to Woo and to the imperial government were the same as those mentioned in the case of Ward.

General Burgevine lacked some of the qualities which contributed to General Ward's success. He was lavish in the use of money, and was careless about keeping his force at work. He chartered steamers and built roads, and did not move when desired, declaring that he was organizing the force. He was refused funds, and, resenting this, assaulted a Chinese official who appears to have acted as treasurer. He was then dismissed from the command.

When General Ward died there were many outstanding accounts for different articles which had been supplied to the force by persons of various nationalities. The number of the accounts was increased during Burgevine's command. These are the claims in question at the moment.

Why did the writer prosecute these claims?

When General Burgevine was dismissed from the command, he declined at first to acknowledge the right of the Taotai, Woo, to remove him. Afterwards he left his command, but he retained three steamers. Two of these he gave up at a later moment, but he held one, declaring that there was a considerable sum due to him, and other amounts due to various persons who were likely to hold him responsible, and that he would not give up the vessel in question until these were paid.

At this stage of affairs Woo appealed to me to require General Burgevine to deliver up the steamer (the Confucius), alleging that she was the property of the government, and that as General Burgevine was no longer in authority he could have no claim upon her.

After consultation with General Burgevine, it was arranged that the steamer should be delivered under the terms of an agreement which was executed between myself and Woo. I append a copy in English of this agreement. It provides substantially that the steamer shall be delivered; that the Taotai shall pay all claims which shall be adjudged just by arbitrators to be appointed, one by the writer and one by Woo, and names an umpire in case of the disagreement of the arbitrators.

From this recital it will be understood how it happened that the case of the claims devolved upon me. I may mention that the greater mass in number and in value was held by citizens of the United States, and that my action was taken, at the instance of Burgwine and of various creditors, in good faith, and with a desire that all sums justly due should be recovered, and that no undue responsibility should attach itself to Burgevine, or to the estate of Ward, some of the claims having been held to be due and owing from Burgevine and others from the estate, and declaration made that these would be pursued in case of the failure of the Chinese.

What was done under this agreement?

The arbitrators selected proceeded to examine such claims as, after due notice, were presented. They heard the claimants so far as seemed to be necessary. Woo also appeared, but he took little interest in the matter. After giving him, and all others concerned, a reasonable time in which to offer information and evidence, the award was brought in.

Why was this award not enforced?

Upon asking Woo to make payment according to the terms of the award, he refused to acknowledge any obligations under it, saying that the arbitrators had acted hastily, and that many of the claims which they said ought to be paid by him had been paid or for some reason were not justly due.

These statements of his were so positively made that I undertook to examine the evidence which he offered, in order to determine whether his objections were well taken

It is due to him to say that in many instances I satisfied myself that he was right.

At this time Woo declared his willingness to pay all just claims, and together we examined the whole mass of those which had been offered. He admitted some; others were rejected by him with my approval, but there remained still others which I thought just, but which he would not admit.

At this point I endeavored to procure the payment of the claims which he admitted, but failed. He urged that he had counter claims, especially against Mr. E. J. Benson, a former quartermaster-general under General Burgevine; that a general settlement ought to be reached, and that until this was done he could not pay anything whatever.

These circumstances led naturally to a second arbitration. After careful discussion of the terms, the documents of submission were finally agreed upon in the month of October, 1863. It provided (*a*) that the claims of General Ward's estate, and the general claims on account of the Ward Corps on my side, and on the side of the Taotai the claims against Mr. Benson, should be submitted. (*b*) That I should drop all claims not supported by the arbitrators, and should endeavor to secure the payment of any amount declared to be due from Mr. Benson. (*c*) That the Taotai should pay all amounts declared to be due and owing from him.

This agreement superseded the former one, and henceforward I could claim under it only. Whether I was wise in yielding my position under the first arbitration has been questioned, but I have no doubt that my course was the best one which could have been taken. I have never asked a Chinese official to do anything which my sense of fair dealing condemned. I never could be a party to procedure of such kind. How, then, could I insist upon compliance with an award which, though honestly and intelligently given, and, as I believe, correctly on the proof offered, was discredited in many points by the more perfect proofs afterward adduced, or of what use would such an award be to our minister at Peking, or to our government, in any dealings which they might have with the claims? Discredited upon many points, it would be considered void of weight in regard to others, and it would have remained to examine each claim still urged upon its merits.

What was the next step taken?

Of the agreement for a second arbitration I have already spoken. Having secured it, the business was proceeded with very carefully. The claimants, in some instances, appeared personally. In other cases they trusted the representation of their claims to me. Woo appeared frequently and stated his case fully. Two years had elapsed since the date of the first agreement. The claimants were urgent on the one side, and, certainly, Woo had had time to prepare his objections. The awards were brought in only after the most perfect opportunity had been given him to state his objections.

The awards were given on the 18th of January, 1864. I append hereto a copy of that upon the general claims, with a supplementary sheet showing a sum of 34,856$\frac{40}{100}$ taels and $23,595.72 to be due.

After the awards were given, I called upon Woo to make payment of the amounts declared to be due to the general claimants. He soon after sent to me a lesser amount for accounts stated. I inclose a statement of the sum then handed to me. I at once paid it over to the proper persons. He declined to pay the balance, and no part of it has been paid to this moment.

How much remained due from Woo after this payment of a part of the claims? Who are the persons to whom such amounts are owing, and what efforts have been made to enforce the payments?

I append a sheet which shows how much was due under the second arbitration after Woo made his partial payment, and to what persons. This sum is, of course, increased by accretions of interest.

I made frequent representations to Woo of his obligations to pay, using every legitimate argument to induce him to do so, but without effect. On the 3d of February, 1865, I placed the matter in the hands of Mr. Burlingame, then United States minister at Peking, but still did not remit my efforts to procure a settlement.

On the 15th of December, 1866, I wrote again to Mr. Burlingame saying that I had abandoned all hope that Woo would pay, and finally leaving the prosecution of the business to him.

I left for America in the early part of 1867, returning early in 1868. In June of that year, I visited Woo, who had retired from office and was living at a distance of 150 miles from Shanghai, in order to make another effort to settle the claims and those of the estate of General Ward. My efforts were altogether unsuccessful.

In April, 1869, I visited Peking for the purpose, among others, of stating personally to Mr. Browne, then United States minister, the history of the claims, and of inducing him to urge the government to pay them, or to require Woo to do so.

What, in your opinion, is the reason that payment of the claims has not been enforced by the legation?

As I have stated, my first formal reference of the claims to the legation was made on the 3d of February, 1865. I had, prior to this date, consulted freely and fully with Mr. Burlingame, and each step of my procedure had received his approval. He was,

moreover, unwilling to take action at Peking excepting as a last resort, and it was not until the date just given that it seemed at all necessary to invoke his assistance.

Mr. Burlingame left Peking in March, 1865, and did not return until October, 1866. During this interval the claims naturally enough slept. In December of that year I again appealed to him for his interference. A few weeks later I went to America, and before my return Mr. Burlingame had finally departed from China. I have no information of the action, if any, taken by him during this time.

Mr. Ross Browne, who succeeded Mr. Burlingame, arrived in China in September, 1868. In conjunction with various claimants, I stated to him the nature and condition of the claims immediately after his arrival, and in April, 1869, I visited Peking and put the whole case again before him. He promised to take action with the government, but soon after hearing of the nomination of Mr. Howard as minister to China, he resigned his post.

Governor Low reached China in March, 1870. He has examined the claims and esteems them just. His efforts to procure action upon them by the government have however been futile. He has said, I believe, that he has no hope of collecting them from the government until it shall have occasion to ask some advantage at his hands.

May the Chinese Government be held for the payment of these claims?

In my opinion, the government may be so held. Generals Ward and Burgevine were doing the work of the government. They were, I believe, recognized by imperial decrees. To the former posthumous honors were awarded. They made complaint of the laches of the latter to Mr. Burlingame. So far as I can judge, they were as perfectly officers of the Government of China as any in their whole military employ.

On the other hand, Woo was not a private citizen, but the local representative of the imperial government, whose accounts were, or should have been, duly rendered to the government. It might be difficult to prove that his submission of the claims to arbitration was the submission of the government, but it was so morally. There was no more perfect way to determine the validity of the claims. No allegation has been made that it was beyond the scope of Woo's authority to make the submission.

The character of the arbitrators is such as to place the award beyond suspicion. The foreign mercantile community of China has had no more worthy and intelligent representation than the gentlemen chosen to act in this capacity.

Successive ministers have indicated their sympathy with the claimants, and their approval of the steps taken by me. The failure to press the claims at the capital has resulted from no doubts of their validity, but has been the result of circumstances, and, to an extent, of that indisposition to press pecuniary claims felt by all diplomatic officers.

Having thus answered the several questions raised in your communication, I desire, in conclusion, to express the hope that you, and the others interested, may soon receive the amounts which are due to you. It is a source of great regret to me that my prolonged and earnest efforts in your behalf have met with no better success.

I shall forward copies of this letter to the legation and the Department of State.

I am, sir, your obedient servant,

GEORGE F. SEWARD,
Consul-General.

JOHN F. TWOMBLY, Esq., *Shanghai.*

[Inclosure 1 to inclosure 2 in No. 536.]

Agreement between George F. Seward, United States consul at Shanghai, and Woo, taotai.

1. The consul agrees that the steamer "Confucius" shall be returned to the proprietors.
2. It is understood that General Burgevine intends to leave Shanghai.
3. The taotai agrees that all outstanding claims shall be settled within three months.
4. Such claims shall be placed before Takee and a delegate to be named by the consul, who shall act as arbitrators. In case of their being unable to agree, Captain Borlace, R. N., shall act as umpire.
5. The taotai agrees to waive any complaints heretofore made against Borgevine.

Tung-Chi, 1st year, 12th month, 15th day.

SHANGHAI, *February* 2, 1862.

After the above date, letters passed between the taotai and myself in which Frederick H. B. Jenkins, esq., of the house of Messrs. Howard & Co., was agreed upon as the taotai's arbitrator, and J. Kearney Rodgers, esq., of the house of Messrs. Wetmore, Cryder & Co., arbitrator on the foreign side.

(Int'd.) G. F. S.

[Inclosure 2 to inclosure 2 in No. 536.]

Correspondence showing second agreement between Consul Seward and Woo, taotai.

UNITED STATES CONSULATE,
Shanghai, October 15, 1863.

SIR: I send you clearly written out the terms of the arbitration determined upon by us yesterday. If satisfactory, please affix your official seal, as I have already done, and return it to me. It is written in duplicate.

The arbitrators shall be, if they will consent to act Edward Cunningham and Thomas Hanbury, esqs. In case they disagree upon any one or more of the claims, they shall call in a third party of their own choosing, whose decision shall be final. But if both agree, then the taotai, or consul, as the case may be, shall abide their decision.

The matters which it shall be competent for them to examine and pass upon shall be the various claims against the Chinese Government or Taotai Woo, on account of the Ward corps, the Ward estate, and the Keor Jeor steamer, and the accounts of E. J. Benson, quartermaster-general.

The object in view in this arbitration is the closing up of the whole business named, and it is therefore expressly agreed that what the arbitrators say shall be final, and shall be binding on either party. The claims which may be declared just by them shall be paid by the taotai within fifteen days from the time that the decision is made. Those claims which are declared not just or unsupported shall be dropped by the consul, and never brought forward again. The accounts of Benson shall be looked into by the commission, and, in case a deficit shall be found, or a wrong use of moneys shown, the consul shall use his utmost endeavors to force a return of the amounts thus in deficit or wrongfully used.

The arbitrators shall receive from the taotai one per cent. and from the consul one per cent. upon all claims established against the government, or Taotai Woo, as a consideration for their services.

The arbitrators shall make their decision within forty-five days from the date hereof.

I will address you again so soon as I have had an opportunity to ascertain whether the gentlemen above named will consent to act in the desired capacity.

I have the honor to be, sir, your obedient servant,

GEORGE F. SEWARD,
United States Consul.

[Inclosure 3 to inclosure 2 in No. 536.]

Woo, taotai, to the consul.

We have received your dispatch in connection with two copies of the agreement entered into by us, and written in English and Chinese, asking us to put our seal upon them.

In regard to the dues on the account which is strictly General Ward's, we have several times gone through with that account, and it ought not to be brought up again. It is so tangled that it cannot be unraveled. We much expected an early disposal of this account, now that the consul again proposes to submit it to arbitrators. It is for the purpose of ending that case according to justice and propriety the account of Mr. Benson should be reckoned in connection with that of General Ward, and the dues on account of the former made available in settling the accounts of the latter. There is no reason in our being called on to pay money on account of General Ward first.

In regard to Mr. Hanbury being asked to act as arbitrator, as spoken of the other day, we are but little acquainted with him, having met him but once, and do not know whether he will serve.

We have put our seal to the agreement written out and sent by you, and, retaining half of the copies, return the other half to you. Please ask the parties named as arbitrators whether they will willingly serve, and what day they will attend to the business at your office, and inform us a day in advance, and we will go and wait for them.

Respectfully, &c.
9th moon, 6 day, October 18.

[Inclosure 4 to inclosure 2 in No. 536.]

Decision of the arbitrators.

SHANGHAI, *January* 18, 1864.

SIR: We have the honor to inform you that in comformity with the agreement dated 13th October, 1863, between yourself and Woo, ex-taotai of Shanghai, by which we were appointed arbitrators finally to decide and settle certain outstanding accounts

between the said Woo, in behalf of the Chinese Government, and other parties bringing claims against him, that the examination of them has had our careful attention and consideration during the past three months, and as the result of our investigation we now beg to hand you a list of the various sums we have decided are due and owing by Woo to the various claimants, amounting in all to taels 28,078.81 and $23,398.22, of which sums taels 21,174.96 and $15,892.47 have been acknowledged by Woo to be due and owing; those items passed by us but which he would not admit are shown in the list by a red cross.

We further hand a second list showing the sums we have decided to reject entirely, amounting to taels 22,606.95 and $11,563.69.

The accounts, as passed, we decided to be cashed, during the ensuing month of February, without interest. We have to-day written to Woo, informing him of this, and communicating full particulars of the result of the arbitration.

As regards Mr Benson's accounts, we have decided that although the receipts and documents produced were unsatisfactory and incomplete, the moneys received by him were expended on account of the Chinese Government, and were not used to discharge any of the claims now settled by us as still due and owing.

We have already addressed you in reference to the claims for and against the estate of General Ward (deceased), which, therefore, need no comment here.

We are, sir, your obedient servants,

EDWARD CUNNINGHAM,
THOMAS HANBURY,
Arbitrators.

[Inclosure 5 to inclosure 2 in No. 536.]

Supplementary awards by the arbitrators.

SHANGHAI, *January* 20, 1864.

SIR: With reference to the decision given by us on the 18th instant, regarding claims made on Woo, ex-taotai of Shanghai, we regret to say that some items then escaped our attention in making up the accounts. These have since had the consideration, and we have further allowed the following as valid:

H. Fogg & Co.:

	Taels.	
70 tons of patent fuel	770.00	
Captain Graham, for services	300.00	
500 muskets ex "Anglo-Saxon"	4,000.00	
Howitzers and shells	1,246.30	
	6,316.30	
Less amount twice charged	349.93	
		5,966.37
G. Gunther:		
For 1,500 haversacks	600.00	
For canvas, duck, &c	26.56	
For steamer Rose	4.68	
		631.24
Phillips, Moore & Co.:		
For serge shirts		180.00
		6,777.61
Taikee:		
For hats, &c., Mexican dollars		197.50

We are your obedient servants,

EDWARD CUNNINGHAM,
THOMAS HANBURY,
Arbitrators.

To GEORGE F. SEWARD, Esq.,
United States Consul-General.

[Inclosure 6 to inclosure 2 in No. 536.]

List of claims allowed by Messrs. Cunningham and Hanbury, arbitrators, as valid against Woo, taotai.

	Amounts.	Taels.	Dollars.
H. Fogg & Co.:			
Steamer Willamette	415.28		
Bopeep	922.56		
Cricket	1,118.79		
Rose	1,323.70		
Paoshun	2,855.50		
Pluto	113.23		
Zingari	1,587.03		
Hyson	1,006.27		
Confucius	530.07		
Chinese Government	1,571.65		
Do	47.50		
Do	420.25		
Wahee & Co.:		11,931.83	
Steamer Bopeep	545.92		
Rose	153.40		
Willamette	560.21		
Pluto	894.41		
Cricket	844.46		
Zingari	1,162.50		
Hyson	489.06		
Confucius	1,270.35		
Rose	215.93		
Ashley & Co.:		6,136.24	
Steamer Hyson	141.40		
Zingari	728.10		
Pluto	144.50		
Cricket	23.50		
Bopeep	10.90		
General Burgevine, part of 1,548 taels	462.00		
General Burgevine	1,086.00		
		2,596.40	
C. Davidson, steamer Hyson			1,360 00
Captain Hawthorne			148 00
Propeller N. C. Herald		134.90	
Thomas Hunt & Co.			
Military Kah Ding	33.90		
Chinese Government	5,943.82		
Steamer Hyson	797.54		
Pluto	461.31		
Willamette	2,056.59		
Rose	916.03		
Bopeep	343.43		
Cricket	560.15		
Zingari	1,957.20		
Chinese Government	320.00		
Chinese Government, part of 1,441.25 taels	720.00		
Chinese Government, part of 714.50 taels	364.50		
			14,474 47
H. Muller			30 60
Thomas Jenkins			1,250 00
Dry-dock, Zingari		300.00	
Hawkins & Co., Zingari		606.77	
J. A. Martin, Chinese Government			34 50
H. E. White, Chinese Government		191.00	
Hall & Holtz, Chinese Government	394.50		
Chinese Government, part of 164 taels	120.00		
Chinese Government, part of 333.15 taels	250.00		
Chinese Government, part of 112.75 taels	66.00		
Chinese Government, part of 1,137.35 taels	181.50		
Chinese Government	281.95		
		1,293.95	
Jim Crow, steamer Confucius, at Ningpo			350 13
Apping, Chinese Government			1,245 25
Sinkee, Chinese Government			216 00
Wahee & Co., steamer Keor Jeor		178.72	
Thomas Hunt & Co., steamer Keor Jeor, supplies	653.25		
Do	2,137.60		
			2,790 85
A. H. de Carvalho, part of 1,117.95 taels		700.00	
C. H. Richards, part of $483			300 00
Thomas R. Pinder, part of 418 taels		209.00	
J. Kearney Rodgers		500.00	
Vernon & Hay		2,300.00	
C. P. Butler			829 02
Services of arbitrators, as agreed		1,000.00	
		28,078.81	23,398 22

SHANGHAI, *January* 18, 1864.

[Inclosure 7 to inclosure 2 in No. 536.]

List of claims allowed by Messrs. Cunningham and Hanbury, arbitrators, as valid against his excellency Woo, taotai.

SUPPLEMENTARY.

	Amounts.	Taels.	Dollars.
H. Fogg & Co.:			
70 tons of patent fuel	770 00		
Captain Graham, for services	300. 00		
500 muskets, ex Anglo-Saxon	4, 000. 00		
Howitzers and shells	1, 246. 30		
	6, 316. 30		
Less amount charged twice	349. 93		
		5, 966. 37	
G. Gunther:			
For 500 haversacks	600. 00		
For canvas, duck, &c	26. 56		
Steamer Rose	4. 68		
		631. 24	
Phillips, Moore & Co., for serge shirts	.....	180. 00	.....
Saikee for hats, &c	.....	.....	197 50
	.....	6, 777. 61	197 50

SHANGHAI, *January* 20, 1864.

[Inclosure 8 to inclosure 2 in No. 536.]

List of claims allowed by Messrs. Cunningham and Hanbury, arbitrators, and paid.

	Amounts.	Taels.	Dollars.
H. Fogg & Co	11, 511. 58		
(H. E. White)	191. 00		
		11, 702. 58	
Wahee	.....	5, 920. 31	.....
Ashley & Co	.....	1, 510. 40	.....
Hyson (C. Davidson)	.....	.....	1, 360 00
Willamette (Captain Hawthorne)	.....	.....	148 00
N. C. Herald	.....	134. 90	.....
H. Muller	.....	.....	30 00
Thomas Jenkins	.....	.....	1, 250 00
Dry-dock Zingari (Hawkins)	.....	906. 77	.....
J. A. Martin	.....	.....	34 50
Thomas Hunt & Co	2, 569. 97	.....	.....
(Already paid)	10, 500. 00	.....	13, 069 97
Arbitrator's charges	.....	1, 000. 00	.....
	.....	21, 174. 96	15, 892 47

SHANGHAI, *January* 31, 1864.

[Inclosure 9 to inclosure 2 in No. 536.]

List of claims allowed by Messrs. Cunningham and Hanbury, arbitrators, but still unpaid.

	Amounts.	Taels.	Dollars.
Hogg & Co.:			
Stores, &c	420. 25		
Patent fuel	770. 00		
Captain Graham	300. 00		
500 muskets	4, 000. 00		
Howitzers and shells	1, 246. 30		
	6, 936. 55		
Less error	349. 93		
		6, 386. 62	
G. Gunther:			
Haversacks	600. 00		
Canvas, duck, &c	26. 56		
Steamer Rose	4. 68		
		631. 24	
Phillips, Moore & Co., shirts		180. 00	
Saikee for hats			197 50
Wahee & Co., steamer Rose	215. 93		
Account rendered	178. 72		
		394. 65	
Ashley & Co., tents		1, 086. 00	
Thomas Hunt & Co, account rendered	2, 137. 60		
Do	653. 25		
Do	320. 00		
Do	720. 00		
Do	364. 50		
			4, 195 35
Hall & Holtz:			
Account rendered	394. 50		370 00
Do	120. 00		
Do	250. 00		
Do	66. 00		
Do	181. 50		
Do	281. 95		
		1, 293. 95	
Jim Crow, account rendered			350 13
Apping, account rendered			1, 245 25
Sin Kee, account rendered			216 00
A. H. de Carvalho			
C. H. Richard		700. 00	
T. R. Pinder			300 00
J. K. Rodgers		209. 00	
Vernon & Hay		500. 00	
C. P. Butler		2, 300. 00	
			829 02
		13, 681. 46	7, 703 25

SHANGHAI, *January* 31, 1864.

No. 2.

Mr. Low to Mr. Fish.

No. 151.] LEGATION OF THE UNITED STATES,
Peking, May 4, 1872. (Received July 22.)

SIR: I have received from Mr. John Fogg Twombly, of Shanghai, two letters, copies of which are inclosed herewith, respecting certain claims which he holds against the Chinese Government. I have also received from Mr. Consul-General Seward copies of two notes which he has addressed to Mr. Twombly, in which the history of the claims before referred to is clearly and accurately stated. Efforts having been made, both by the consul-general and myself, to induce the Chinese officials to settle the claims, without success, and there seeming small prospects of better results in the future, Mr. Twombly proposes to bring the whole question to the attention of the department. With that

object in view, I am now asked to furnish the department with any information in my possession which may be useful in enabling you to arrive at a clear understanding of the whole question at issue.

So far as the history of the claims is concerned, the two notes of the consul-general to Mr. Twombly, copies of which have, I understand, been sent to the department, contain substantially all the information in the possession of the legation. It is, therefore, only necessary for me to state what action I have taken and the result.

About two years since Mr. Twombly visited Peking, laid before me the two claims and asked my assistance in enforcing their collection from the imperial government. I made a careful and thorough examination into the whole business, and arrived at the conclusion that the balance due upon the award of the arbitrators, Messrs. Cunningham and Hanbury, was a just and proper claim, which the government should either pay itself or compel the local authorities at Shanghai to do. My correspondence with Prince Kung, copies and translations of which are sent herewith, contain my opinions as to the validity of the claim, my action in endeavoring to secure its liquidation, the refusal of the government to pay it, and the grounds upon which the refusal is based.

As this correspondence contains the substance of the arguments brought forward on either side, it does not seem necessary to burden the department with additional documentary evidence, or to refer to the personal discussions between myself and the ministers of the Yamen upon the subject.

The "Ward estate" claim has never been taken up by me officially. It seemed to rest upon a less firm foundation than the other; and as the government refuses to recognize the validity of the better one, I deemed it inexpedient to attempt to press the other.

It is hardly necessary for me to enter into a discussion of or review the arguments of the ex-Taotai Woo in justification of his refusal to pay the award of an arbitration, which he voluntarily consented to beforehand. They are frivolous and evasive, and not unlike, I regret to say, those brought forward by Chinese officials generally when they desire to escape responsibility.

I may add, that, in my opinion, there is small prospect that reason or argument will induce the government to recede from its present position with respect to these claims.

I have, &c.,

FREDERICK F. LOW.

[Inclosure 1 in No. 151.]

Mr. Twombly to Mr. Low.

SHANGHAI, *March* 20, 1872.

SIR: At Peking, on the 17th of June, 1870, I addressed you regarding the balance of the claims unpaid, as awarded by the arbitrators, Messrs. Cunningham and Hanbury, January 18 and 20, 1864, against the Chinese Imperial Government, and made payable in their award February, 1864.

The documents relating to the case in the legation, as long previously forwarded from this port by Mr. Consul-General Seward, were therein referred to. You, having examined the matter, promised your best attention to the claims, and as promptly and urgently as possible to press them upon the attention of the government. Incidents then known, and other incidents then following, it is understood delayed your action.

In an interview in the autumn of 1871, you narrated your subsequent proceedings, closing by intimating you had used your best exertions and exhausted your resources on behalf of the claimants without avail.

I thereon proposed to bring the claims to the notice of the Department of State at Washington, in furtherance of which you very kindly intimated your readiness to

make a statement of their nature and present position from the legation archives, and your action upon them, that the department might be fully advised.

My present object in addressing you is to avail of your kindness by asking you to do so at your earliest convenience. I am purposing immediately visiting the United States, and soon after arrival there I wish to lay the claims, duly authenticated, before the State Department.

At my request, Mr. Consul-General Seward has drawn up a statement of his connection with the claims, which gives in order and very completely the early history of them, and his exertions both before and after forwarding them to the legation for their collection.

A copy of this is forwarded to you for your information, and with the hope that it may be found of service in drawing up the statement asked of you.

I have the honor to be, sir, your obedient servant,

JOHN FOGG TWOMBLY,
Agent for Claimants.

His Excellency Hon. F. F. Low,
United States Minister Plenipotentiary, &c., &c., &c., Peking.

[Inclosure 2 in No. 151.]

Mr. Twombly to Mr. Low.

SHANGHAI, *March* 20, 1882.

SIR: I have this day addressed you regarding the claims against the Chinese Imperial Government, as arbitrated by Messrs. Cunningham and Hanbury, in January, 1864, and still remaining unpaid.

In this letter I wish to speak of the kindred claim of the estate of the late General F. F. Ward.

I am aware that the matter of this claim has not formally and finally been transferred from the consulate-general here to the legation of the United States at Peking; but, from the first, communications have been exchanged and interviews had regarding it, both specially and in connection with the arbitrated claims. The report of the arbitrators eliminating it, for reasons stated, from the claims after passed upon, is iu the legation archives. The laches therein spoken of, as on the part of the representative at the time of the estate, ceased in June, 1868, by the production of duly authenticated accounts, on its behalf, from New York, of money received from the Chinese Imperial Government for expenditure for materials of war, &c., in England and the United States, for its use. These accounts were exhibited in an interview with you regarding the claim of the estate against the Chinese Imperial Government at Peking in June, 1870.

The claim, as you are aware, primarily rests upon the dying statement of General Ward immediately after receiving a mortal wound in an engagement with the Taiping rebels near Ningpo, as at his request written down, and certified to by two British naval officers connected with the British forces accompanying his command, and the subsequent admissions of Woo, Taotai of the district of Shanghai at the time, and under whom Ward served, and who after acted as commissioner for the settlement of claims against the Chinese Government connected with the so-called "Ward forces." Other corroborating circumstances have, from time to time, appeared.

The estate labors under the disadvantage of not having the claim adjudicated or allowed, except as allowed in connection with the other claims spoken of in the award of Messrs. Rodgers and Jenkins subsequently replaced by the award of Messrs. Cunningham and Hanbury, which, as mentioned, did not embrace this claim.

As intimated in communication before referred to regarding the awarded claims, I wish to present this claim, in conjunction with those, to the State Department at Washington.

You would, therefore, greatly oblige if you would give such information as you may be able, and make such suggestions as you may deem expedient, with a view of placing clearly before the department the nature and present position of the claim, and inducing its favorable consideration of it, and action upon it.

Mr. Consul-General Seward, having been familiar with the claim from the beginning, promptly responding to my request, will give more in detail the history, nature, and present position of it, relieving you of the labor of giving anything more than the general views and action of the legation regarding it, as shown by its archives. A copy will be sent you for information, &c.

I have the honor to be, sir, your obedient servant,

JOHN FOGG TWOMBLY,
Administrator and Attorney of the Sole Heir of the Estate in China.

His Excellency Hon. F. F. Low,
United States Minister Plenipotentiary, &c., &c., &c., Peking.

[Inclosure 3 in No. 151.]

Mr. Low to Prince Kung.

LEGATION OF THE UNITED STATES,
Peking, July 7, 1870.

SIR: Mr. John F. Twombly, of the American firm of H. Fogg & Co., at Shanghai, recently arrived in this city, and presented to me the following statement:

"In the month of February, 1864, Mr. Seward, the American consul at Shanghai, and Woo, the intendent of the Suchan circuit, had a consultation respecting the accounts presented by Messrs. H. Fogg & Co., and others, for supplies furnished, during the years 1861 and 1862, to the land and marine forces of the Chinese Government at various times; and they agreed to refer them all to two merchants, viz, Thomas Hanbury, an Englishman, and Edward Cunningham, an American, to examine and decide. The letters which passed between these two officers are appended, and Wu affixed his seal to the agreement to take their decision as a settlement of the matter.

"Messrs. Hanbury and Cunningham went over all the accounts and decided that the sums of taels 28,078.81 and $23,398 were due without interest. Since that arbitration, the intendant has paid on each account the sum of fifteen thousand taels and dollars, and something over, but nothing since those payments. In the year 1865, Consul-General Seward urged the intendant to liquidate the claims, but he replied that as he had long ago left the post, he would hear nothing about the matter. The intendant Quing was then applied to, who responded that the business belonged to his predecessor and he was unable to settle it.

"Last year Mr. Twombly, having waited till Mr. Seward returned from the United States, went with him up to the city of Hangchow to see Wu about these accounts, and urged him to settle them. He evaded the application and said that there were still many unsettled accounts on his side, and he would have nothing to do with them at any rate. The consul-general having now gone home, there is no one to prosecute the matter at Shanghai, and Mr. Twombly has come to Peking himself to present it.

"The balance due after the last payments was taels, 19,458.5, to which is now to be added interest for seven years, making the total amount of the claim taels 35,803.73, which, as the present intendant at Shanghai refuses to pay, he requests that the foreign office will compel him to settle."

I have myself carefully looked over all these accounts referred to in the preceding statement, and find them to consist of supplies furnished to the forces and vessels of China, when they were engaged in suppressing the rebellion in Kiangnan, and are really what they profess to be. The two arbitrators, Mr. Hanbury and Mr. Cunningham, were of such high character that they would, I can assure you, never admit an account which was not vouched for. The former intendant Woo alleges that there are many unexplained accounts relating to this matter, and he cannot now go again over them; but the fact is that the accounts not cleared up, to which he refers, were never brought in by the arbitrators, and cannot, therefore, be brought forward here.

At this time the region of Kiangnan is quiet and the people there now quietly pursue their avocations, each one in his own way; but it was by means of the supplies furnished by Messrs. H. Fogg & Co., and others, that in former years this peace was in a measure owing. Without them the war could not have been carried on, and it is right that this small balance should be paid to the claimants. Seeing that the two intendants Woo and Ying thus turned its settlement off one on the other, the interest has accumulated, and the longer it is unpaid the more it becomes.

These are, no doubt, accounts for articles which were used by the Chinese Government, and should have been settled by the intendant at the time; and I therefore request your imperial highness to adopt measures for speedily paying the sum, principal and interest, due to Messrs. H. Fogg & Co., and others. There is not the least necessity for appointing any one to examine their accounts again.

I inclose a copy of the letters which passed between the consul-general and intendant about their agreement to the arbitration, for your imperial highness's information.

I have the honor to be, sir, your imperial highness's obedient servant,

FREDERICK F. LOW.

To His Imperial Highness Prince KUNG, *&c.*

[Inclosure 4 in No. 151.]

Prince Kung to Mr. Low.

TUNG-CHI, *9th year, 6th moon, 18th day.* (*July* 16, 1870.)

Prince Kung, chief secretary of state for foreign affairs, herewith replies upon business:

On the 7th instant, I had the honor to receive your excellency's dispatch relating to the claim of Messrs. H. Fogg & Co., and others, for stores furnished by them to the

Chinese Government in 1861 and 1862, according to the decision of Messrs. Hanbury and Cunningham, who were appointed to examine and arbitrate the accounts, and requesting me to adopt measures for paying the balance still due on them, &c.

A copy of this dispatch and its inclosures has been sent from this office to the superintendent of trade and the governor of Kiangsu, with directions to them to inquire into this matter and make a report for action to be taken upon it.

As soon as their reply is received I will inform your excellency of its purport, and meanwhile send this that you may know what has been done.

To His Excellency FREDERICK F. LOW,
United States Minister to China.

[Inclosure 5 in No. 151.]

Mr. Low to Prince Kung.

LEGATION OF THE UNITED STATES,
Peking, October 20, 1870.

SIR: On the 7th of July last I addressed a communication to your imperial highness respecting the claim of the American merchant John F. Twombly, of the firm of H. Fogg & Co., for goods procured of them in 1861 and 1862, on which there was an unpaid balance still due, which I requested might be paid. To this I received a reply stating that a dispatch had been sent to the superintendent of trade at Shanghai and to the governer of Kiangsu to inquire into it, and that when their report was received another communication would be sent upon the matter.

Three months have now elapsed since that was received and nothing has been done. These articles were for the use of the Chinese troops warring against the Taiping rebels in those years, and these merchants sold them in full faith in the intention of the government to pay for them; and yet it has allowed the matter to drag on until now. Peace has been restored throughout those regions for more than six years, and yet this small amount, between thirty and forty thousand taels, has not yet been pushed to a settlement, and that, too, when its liquidation involves the reputation of China, and it is greatly for its advantage to maintain this good name. The items of this long-standing account have been all carefully examined, so that there is no need of again going over them. The arbitrators, Messrs. Cunningham and Hanbury, with other persons, and much of the evidence, cannot now be obtained, and, therefore, another inquiry into them is impossible.

I therefore send this note to urge a speedy payment of the claim of Messrs. H. Fogg & Co., both for the evidence it will give that their confidence was not misplaced, and a further proof of the amicable relations existing between our countries.

I avail myself of this opportunity to wish your imperial higness every happiness.

Your obedient servant,

FREDERICK F. LOW.

To his Imperial Highness Prince KUNG, *&c.*

[Inclosure 6 in No. 151.]

Prince Kung to Mr. Lowe.

TUNGCHI,
Ninth year, intercalary 10th moon, 5th day. (*November* 28, 1870.)

Prince Kung, chief secretary of state for foreign affairs, herewith returns a reply:

I had the honor to receive your excellency's dispatch of July 7, 1870, in which you informed me that Mr. John F. Twombly, of the American firm of H. Fogg & Co. had brought to your notice the examination of the accounts of that house for supplies furnished to Chinese troops by the umpires Messrs. Hanbury and Cunningham, who were appointed by the consent of G. F. Seward, United States consul-general, and Woo, then intendant of circuit, and had found that there was owing the firm the sum of 28,078.81 taels, and $23,398, of which Wu had already paid over the sum of 15,000 taels and more, and about $15,000, leaving still a balance unpaid altogether of 19,458.5 taels, to which add seven years interest, making the total sum of 35,803.73 taels now due, which you request may be paid up.

On receiving this dispatch it was referred to the superintendent of commerce at Shanghai and to the governor at Kiangsu, for them to have an examination made, and send back a full report upon the matter, as was made known to you at the time, July 16, 1870.

I have since received your note of October 20, in which you stated, in reference to this claim, that three months have elapsed without obtaining any answer, and urge many considerations why it should be settled without delay.

I was just on the point of replying to your note when the report from the superintendent of trade at Shanghai came to hand, inclosing the reply made to him by Woo, formerly intendant at Shanghai, which was as follows:

"In the winter of 1862 I was engaged in preparing [Ward's] ever victorious force for the attack on Nanking to drive out the rebels, its commander Burgevine and commissary-general Benson both availed themselves of the chance to demand additional arms for the force. I applied to the commissioner of revenue and grain, Yang (also known as Takee), who advanced the sums of 34,000 taels and $78,000 for the purpose. But in consequence of Burgevine not carrying out his orders and having got into a quarrel with the commissioner of grain, the whole enterprise fell through. Of the money paid out the force itself received only about $15,000, and the rest was left in Benson's hands.

"In March, 1862, the commander of the force, General Ward, having received orders from the [acting] governor of the province (Sich Hwan) to make an attack on Suchau, Changchau, and other places, wished to procure some foreign steamers and various sorts of guns and artillery. Yang and I, on getting the orders, succeeded in raising a loan in various places of 270,000 taels, which General Ward received and sent to the United States in bills; but after his death not a ship or a gun was ever received in Shanghai. Further, the amount of $46,553 owed for arms and ammunition bought in England was never sent forward out of this sum.

"This large sum of money has been a matter of much discussion with the United States consul, G. F. Seward, whom I have often requested to take stringent measures to recover for me, but without any response on his part. Indeed, not long after, I was suddenly presented by him with a long bill for articles procured, amounting to the sums of 290,800 taels and $82,090 or more, which, he said, was made up of stores, arms, and ammunition procured at various shops for the ever-victorious force, and for the donatives due to General Ward. These amounts he wished to have me pay immediately, but he never said a word about the previous sums, nor even referred to the obligations then entered into. The (native) lower officers and brokers connected with the force declared, too, that they knew nothing of these purchases.

"I then pointed out some things in the matter that were not clear, and the consul appointed Kearny Rogers and F. B. Jenkins to examine the accounts, but before they had finished their work he appointed Mr. Hanbury, an English merchant, and Mr. Cunningham, an American merchant, to go over them again. Previous to these latter commencing their work the consul and I entered into an agreement and signed it, in which it was clearly stated that he would exert himself all he could to get back the money still due from Ward and Benson on their advances.

"After Messrs. Hanbury and Cunningham had gone over all the details and items, they did not make any distinction between what was made up and what was honest in them, but ended by urging me to pay the bills due to the various shopkeepers, leaving the securities given by both Ward and Benson for the large sums paid to them as of no account whatever and wholly unsettled.

"I was altogether dissatisfied with this result, and would have expressed my rejection of their conclusion; but, remembering that our countries were on good terms, and that General Ward had lost his life in the service of His Majesty, I tried to find out some way of settling the matter without compromising the character of the parties concerned. I therefore dealt as leniently as possible with the bills and accounts presented by the United States consul, and sorted them into the accepted and rejected accounts, of which the former amounted to 15,682 taels and $16,662. Besides the sums of 4,570 taels and $11,270 paid to the foreign storekeepers from time to time, I have also paid over to Mr. Seward the sums of 21,174 taels and $5,392, or so, for which I have his receipts.

"Among the various accounts which I did not approve, were set aside a score or more, amounting altogether to 13,681 taels and $7,730, I terming them approved by the arbitrators; these accounts the consul brought before me in two separate dispatches, and asking for their settlement, which I refused to pay at the time. The reason was that the outstanding obligations of Ward and Benson were not paid up according to the terms of our agreement. The discussion upon this matter was long; the replies and rejoinders, the whole documents, make a pile a foot high.

"Since the summer of 1864 the United States consul, Seward, has known that he has had no ground for an argument, and thus the question has long remained in abeyance. Yang (or Takee) died after that date, and I left office in 1867 on account of illness, while Mr. Cunningham, one of the arbitrators, had left the country. In the summer of 1868 Mr. Seward wrote me two dispatches upon the subject, and made me a visit at my house in Hangchau with the head of the firm of H. Fogg & Co., to have a personal conference upon it. I replied to him with the same arguments that I had used before, to which he had nothing more satisfactory to say, and went off.

"Two years have since passed, and he has not returned. The affair is now ten years old since the first item was charged, during which time he has not dared to make known the circumstance to the United States minister, as is most plainly to be seen. Mr. Twombly has at last gone himself to Peking to present his case to the minister, to whom he has given the accounts that came under the head of those approved by the arbitrators.

"It is, however, plain to me that Messrs. H. Fogg & Co. have included in the claim all the thirty or more separate accounts belonging to various shops which the arbitrators twice examined, and which those claimants have urged him to take the responsibility for. Of those accounts which I acknowledged at first I have paid all; I have also paid over to the United States consul, on account of the claimants, the sum of 21,170 taels, for which he gave me receipts. The firm of H. Fogg & Co. acknowledged the receipt of about 15,000 taels, showing a great difference in the amounts. Looking at the case carefully, it appears to me that the confusion has arisen from these merchants taking those accounts which were included in the list of those approved by the arbitrators, and putting the sums paid by me to the credit of the claims which I approved to the credit of their other accounts (now reduced by so much), and of course leaving balances still due on account of those claims first approved, but paying in full those only approved by the arbitrators. This is like bringing flowers to cover up the wood, and is a clever scheme of theirs to mix and cover up their accounts.

"They say that they do not reckon interest, and then presently add in so much for seven years' interest, thus directly contradicting themselves, and making it as plain as need be that there are other points that disagree with the truth, and that they have made statements of whole cloth to suit themselves. There is evidence enough to show that the confusion in these accounts, which is brought forward to my reproach at this late day, is just a nice plan of theirs to get paid.

"The remark, made in the United States minister's dispatch before me, that these accounts are for articles used by the Chinese Government during the military operations against the Taiping rebels, and were indispensable for their success; that their amount is small, and equity requires their payment, everything being for the use of the troops, and not for that of the intendant, leads me to observe that the salaries of the foreign military officers, who led the ever-victorious force and drilled it to act against the rebels, with their rations and stores, altogether made a great sum. Everything was paid for to the minutest article, and vouchers exist for all accounts, large and small, and for their full payment, even to little sums.

"How much more reasonable would it be for me to urge the settlement of the moneys paid Ward and Benson, of the cost of the arms, &c., ordered in England, and of the disbursements for stores to the foreign shops, amounting in all to more than 400,000 taels, which were raised by myself and Takee in one way and another, and advanced to meet the emergency and supply the wants of government.

"Even to this day my door is crowded with debtors, some with claims unpaid, and some demanding the rest of their bills; for all of whom, unhappily, I have no means to send them off satisfied. Where shall I get anything for this shadowy echo of a claim made up out of nothing, and added to besides with doubtful charges?

"The United States consul entered into an agreement to pursue and settle the accounts connected with the advances made to Ward and Benson, and recover the balances, and now Messrs. H. Fogg & Co. are trying to get their claims placed among those which are allowed; but if Mr. Seward was ordered to reproduce the 300,000 taels and overpaid to these two persons, it would not be difficult to adjust the accounts and settle all the outstanding bills that were approved by the arbitrators, Hanbury and Cunningham.

"Further, the amounts given by the United States minister in his dispatch do not agree with the sums as given in the original bills; and I beg, respectfully, that my clear and particular reply showing this may be made known to the foreign office, and an answer sent to the American legation, urging the minister to require the United States consul to recover the sums due by Ward and Benson, and to revise the accounts wrongly put among the *approved accounts*, and contrary to the agreement between us, approving those that are just and bringing this involved and muddled affair to a close."

I have also received a reply from Tu, formerly intendant of circuit at Shanghai, in which he says:

"The various articles which were purchased from the foreign stores were all paid for in ready money at the time, as they were for the use of government, and no credit on the accounts was given. When Woo was intendant and had the management of the force, the foreigners in it had their wages, and whatever stores were required to be purchased for their use through foreigners were all paid in ready money. The sums of 270,000 taels paid Ward and of 34,000 taels and $78,000 or so paid Benson are plain proofs of this. If the foreigners employed by the government got things from the stores on credit, it was by arrangement between themselves; the shopkeepers should ask the parties who got them, it is plain, for the Chinese officials have nothing to do with those accounts. This principle is certainly well known. These accounts now

brought forward by the storekeepers are all for goods obtained by the foreign soldiers, and Wu, by all that is equitable, need give himself no trouble about them. But, considering our friendly relations with other countries, and especially General Ward's services for China, the sums of about 25,000 taels and $16,000 which have been allowed and paid out of the accounts brought forward by the United States consul, may be regarded as paid on account of humanity and patriotism. The accounts which were disallowed by the intendant, Woo, had, none of them, any evidence to support them; they were all brought forward by the merchants, and put, therefore, in the list of *approved by the arbitrators*, and this is the reason they are never done asking for them. In fact, it is like giving a man an inch and he asks an ell.

"Taking up now the case here brought forward, let me analyze it. The instructors employed at Shanghai in drilling the troops do not exceed, including British, French, and all, more than a few scores of officers, each of whom is paid his wages monthly; if these latter have accounts at the stores, it is no concern of the Chinese government, and the same rule applies to the Americans.

"When the ever-victorious force was employed, the accounts of their officers was a matter of no concern to the intendant Woo. He was, however, unusually considerate and gracious, and in paying the accounts as far as he did at the time, he was exceedingly generous to these strangers. Those other accounts can only be collected from the foreign officers and others who made the debts, and I would request that the United States minister be answered that this is the way for Messrs. H. Fogg & Co. to obtain their money. He can further be requested to enjoin the United States consul at Shanghai to recover the great sums advanced to Ward and Benson, and then the accounts can be balanced equitably and to general satisfaction."

From the above reports of the two intendants in relation to this claim of Messrs. H. Fogg & Co., it is evident that they have mixed up their accounts with the money advanced to General Ward in order to make it out that something is still due them. The first-named (Woo) says that Ward and Benson took several myriads of dollars, for which they gave notes; and that the latter knowingly appropriated large sums of his funds, and thus, without any reason, involved these storekeepers and provoked them, and they have now brought up their accounts as if for articles furnished to the ever-victorious force in order to repay themselves. After looking carefully at all that the late intendant says about the impossibility of paying this claim, it certainly seems to be a very confused and baseless account.

The firm was swindled by Benson, and the United States consul did not carefully examine into the real facts at the time, but for once he heard only one side of the affair, and wrote to the intendant that version which he had learned, desiring him to settle the account. I can come to no other conclusion after looking at every fact in the case.

I have accordingly had the three sets of accounts and letters copied for your excellency's information, that you may, by careful examination of them, ascertain the truth; or, as the proverb says, "When the water falls the stones appear." From the day that military operations against the rebels began, and arms, ammunition, and other foreign stores were needed (nobody knows how many nor can their prices be all reckoned up), no debts were allowed to be made or left unsettled.

At the time that Ward and Benson were connected with the ever-victorious force they received these amounts spoken of (over 300,000 taels), and the money paid to the latter was on account of debts due to the storekeepers; just debts, no doubt, which they must and ought to look to him for settlement. Those accounts which the intendant Woo selected from the whole as being most reasonable, and stretched a point to pay them, were so settled because of the good relations existing between China and the United States; in doing that he did all that could be expected of him, and where is the propriety of asking for the settlement of those other accounts, which are unreasonable and were rejected because they had been paid.

I see in the correspondence that the United States consul-general says in a communication to the intendant that he has reported the whole matter to the minister at Peking—this was before he went to America—and yet it would appear that he never laid it before you for examination. It seems as if he knew that the case was an unsound one, and after he had ascertained that he had been misinformed, he stopped doing more about it.

Messrs. H. Fogg & Co. state that their accounts have been reduced by the payment of 15,000 taels, but Woo says he has paid over on account of storekeepers' claims to Mr. Seward the sum of 21,000 taels and over. These two amounts do not agree, and the full investigation given shows that there is no real grounds for this claim, and that it cannot be liquidated; there is therefore no special need for trying to find out where the discrepancy lies.

In sending this reply to your excellency, I hope you will look at it in a candid desire to get at the equity of the affair.

To His Excellency FREDERICK F. LOW,
United States Minister to China.

No 3.

Mr. Hunter to Mr. Low.

No. 96.] DEPARTMENT OF STATE,
Washington, August 20, 1872.

SIR: Your dispatch No. 151 of May 4, 1872, with the papers which accompanied it, relating to the claims of John Fogg Twombly, esq., against the Chinese Government, has been taken into consideration in connection with the correspondence of Mr. George F. Seward, the consul-general of the United States at Shanghai, upon the subject.

Considering the facts that this is a claim for the payment for supplies furnished to Chinese troops who, according to high authority, as it appears in the correspondence, were mainly instrumental in suppressing a rebellion that threatened the very existence of the Chinese Empire; considering also that the claims were by the consent of the Chinese authorities and the parties interested referred to trustworthy arbitrators, with the understanding that their award should be binding, and that the award agreed upon by the arbitrators has been sanctioned by the payment of part of it, this government is unwilling to believe that the Chinese Government will recede from obligations so clearly contracted and so just, especially as it might have a tendency to discourage others from furnishing such stores and supplies to Chinese military authorities in any emergency which might render it desirable for them to procure them.

You will therefore express the expectation of this government that the claim will be liquidated without unnecessary delay.

I am, &c.

W. HUNTER,
Acting Secretary.

FREDERICK F. LOW, Esq., *&c., &c., &c.*

No. 4.

Mr. Fish to Mr. Avery.

No. 19.] DEPARTMENT OF STATE,
Washington, March 5, 1875.

SIR: The department was lately requested by Mr. Fogg, a member of the firm of Fogg & Co., of China, to call your attention to a claim of that firm against the Chinese Government, which has for some time since been pending, in relation to which Mr. Low, while at Peking, was instructed in dispatch No. 96 from the department, under date of August 20, 1872.

It is supposed that the files of your legation contain full reference to the claim, which is understood to be the same referred to by Mr. Low in his dispatch No. 151, of May 4, 1872, and in instruction No. 96 from the department of August 20, 1872.

In that instruction the opinion was expressed that the claim was a meritorious one, not only intrinsically, but because the matter had been submitted to arbitration, and the arbitrators had made an award in favor of the claimants.

Under those circumstances Mr. Low was instructed to express the

expectation of this government that the claim might be liquidated; and you are instructed in like manner to use your good offices that such payment may be effected.

I am, &c.,

HAMILTON FISH.

No. 5.

Mr. Seward to Mr. Fish.

No. 107.] UNITED STATES LEGATION,
Peking, July 11, 1876. (Received September 5.)

SIR: Referring to your instructions to Governor Low, No. 96, and to Mr. Avery, No. 19, in regard to certain claims known as the "Ward claims," I have now the honor to hand to you a copy of a letter which I am addressing to the foreign office, asking for an interview, with a view to dispose of the matter at issue.

As I am thoroughly conversant with the whole history of the claims, their submission to arbitration, &c., I may be able to present the matter to the government in a way calculated to secure attention. I shall, of course, report to you every step of my procedure.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure in No. 107.]

Mr. Seward to Prince Kung.

PEKING, *July* 11, 1876.

I beg leave to recall the attention of your imperial highness and the members of the foreign office to the claims against the Government of China for stores, &c., furnished to the Ward force at Shanghai.

These claims were submitted to arbitration at Shanghai, and in the month of January, 1864, the arbitrators made their award. This award declared certain of the claims to be just. Of these just claims a part only have been paid.

This subject has been the subject of several discussions, oral and written, between this legation and the foreign office, but no conclusion has ever been reached. It has also been brought before the government at Washington, and on two occasions, one of these being recent, the Secretary of State has expressed the opinion that the claims are just ones, and should be paid.

It is very desirable that such matters should be finally closed up and finished, so that there may be no occasion for dissatisfaction existing. I propose, therefore, to call at the foreign office on such day as may be convenient to you or to other members of the ministry, in order to decide with you what shall be done in regard to these claims.

I have, &c.,

GEORGE F. SEWARD.

No. 6.

Mr. Seward to Mr. Fish.

No. 108.] UNITED STATES LEGATION,
Peking, July 11, 1876. (Received September 5.)

SIR: During the last year, I had in hand at Shanghai a claim, advanced by one of our countrymen named Hill against the estate of a Chinese named Yang Ta Kee, for the use of a steamer called the Keor Jeor, and for her loss while under charter.

The steamer was used for military purposes. Her service began while General Ward was in command of a Chinese contingent force at Shanghai, and was continued under Burgevine and Holland, who successively commanded the "Ward corps," and Macartney, who had a similar employment.

When Burgevine was dismissed from the command, a great many claims against the military authorities were outstanding. These were brought to me, and I tried to get the Taotai, Woo, who had had charge of military matters in our district, to settle them. By agreement between us, arbitrators were appointed, who in due season made a report. A claim of Hill, amounting to 12,000 taels, was among those presented, and was allowed by the arbitrators in full. Later on, the Taotai made so many objections to the award generally, that I was induced to enter upon an examination of its merits, and found that many claims had been admitted which were not good ones. I was not disposed to urge unjust claims, and I proposed, and Woo, agreed to, a second arbitration.

The different claimants did not go before the arbitrators on this occasion, but I appeared in their behalf, and Woo appeared in person. Hill's claim for 12,000 taels was presented by me, and was rejected by the arbitrators, because there was no evidence that Woo had engaged the services of the vessel. Somewhat inconsistently, however, they allowed certain claims for wages, &c., of persons employed upon her.

In presenting the case to the arbitrators, I was acting in good faith, but, as it has since appeared, I was only partially informed of the facts.

The charter began on the 1st of September, 1862, and was effected, through General Ward's agency, between Hill and Ta Kee. Ward died in September, and when the first arbitration was held in March, Ta Kee appears to have asked Hill to present to the arbitrators an account for the services of the vessel for the months of October, November, December, 1862, and January, 1863, giving certain reasons therefor. When I came to prepare matters to present them to the second arbitration, I sent for Hill, and he made before me an affidavit, which is given in the printed minutes of the case Hill *vs.* Ta Kee's Estate, transmitted herewith, at page 43. Beyond this affidavit, and the knowledge of the arbitrators that the steamer had been used by the military forces, I had no evidence to put before them. That I did not think the case a good one, under a strict view, will be indicated by the memorandum upon it, made by me at the time, which will be found on the page of the printed book to which I have just referred. I never doubted, however, that Hill had an equitable case, and at the time I believed that his equity was against Woo, or rather against the government represented by Woo. I knew that the steamer had been much longer in use than the four months, but upon an understanding which I had reached that Hill was effecting a settlement in another way, for the remaining time, I paid no attention to that part of the matter.

From time to time thereafter I heard that Hill was at work with Ta Kee about his matters, and it was only after the lapse of a considerable period that he came to me. I was a good deal indisposed to touch the business, and avoided even conversation in regard to it. I should trace this feeling of mine to an impression that there was something illogical about the case. Finally, however, Hill presented to me a formal petition against Ta Kee's estate—that given in the minutes of the case—and having referred this to the legation, and received an instruction to proceed, I brought the case before the local authorities.

At first sight Hill's affidavit is not readily reconciled with his statements of his agreement with Ta Kee. But the fact is that Hill was an

enterprising man, with a great deal on his hands, and with the hopeful side of his nature more developed than the other. A more cautious man, indeed, would have collected his charter-money monthly. It is not, however, astonishing that he should have dealt with Ta Kee and Burgevine interchangeably, without much care in separating them. The one appeared to be more or less in charge of the money affairs of the Ward corps. The other was its commandant. How far Ta Kee was acting for the government, he could not well know. It was not illogical to suppose that both he and Burgevine were acting for it. At any rate, an examination of the whole matter will indicate to you—

1st. That Hill chartered the steamer to Ta Kee;

2d. That she was used for military purposes;

3d. That Hill has never been paid.

4th. That nothing has been done by him which could rightfully be held to release Ta Kee or his estate.

You will think that this altogether has been a most irregular business. In another sense it must be dealt with, if at all, in an irregular way. Hill is not satisfied with the judgment which the Taotai has given, and has appealed to me to bring the case before the government. He has no other way of appealing, and so, if the matter goes on, I must act more or less as the advocate of his rights, and, in doing so, appear, not before a court, but before the foreign office. The whole business illustrates well the statements which I have heretofore made to you of the imperfections of the Chinese judicial system as it affects foreigners.

I propose now to place the matter before the foreign office, but I shall do this in a cautious way. At the same time I have respectfully to ask for your instructions in regard to it. These can reach me before my discussions with the members of the foreign office have proceeded very far. They are very likely indeed to make a reference to the provincial authorities, which will consume more or less of the time, until your instruction shall arrive.

Mr. Hill is in America, and may address you in regard to his case.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 108.]

HILL vs. TA KEE.

Minutes of the court, including pleadings and arguments of counsel.

Before George F. Seward, esq., United States consul-general, and H. E. Shén, Taotai; Dr. Yates acting as interpreter.

CHARLES E. HILL
versus
YANG TA KEE.

SHANGHAI, *January* 9, 1875.

Mr. I. B. Eames appeared for the plaintiff; Mr. Drummond and Mr. Cowie for the defendant.

This case, being a claim made against the representative of the late Ta Kee, for taels 54,000, and eleven years' interest to be added thereto, in respect of the alleged charter of a steamer named the Keor Jeor, in the year 1862, by the local authorities, to assist in the suppression of the rebellion, came on for hearing to-day.

The petition.

The representation and petition of Charles E. Hill, an American citizen, humbly showeth as follows:

1st. That in the year (1862) eighteen hundred and sixty-two, General Frederick T.

Ward (also an American citizen) was in command of a force of disciplined Chinese troops officered by Europeans (known as the "Ever victorious Army"), acting for and in concert with Chinese officials against the Taiping rebels, who at that time held the cities of Nanking and Soochow, and the great plain of the Yangtsze Kiang between those cities and Shanghai.

2d. This force was stationed at Sung Kong, but General Ward drew all supplies for it from Shanghai; and the wages of the troops, as well as all contingent expenses of the force, were paid by Ta Kee, then government treasurer, and residing at Shanghai.

3d. This necessitated constant communication between Sung Kong and Shanghai which was mostly carried on by means of sailing-boats, and these, owing to head winds and tides, were often delayed, causing great inconvenience, besides running great risk of being captured.

4th. Ward, therefore, demanded of Ta Kee an additional steamer for this work, to insure both safety and dispatch.

5th. In reply to this demand, Ta Kee ordered Ward to charter a suitable steamer to be used as a dispatch boat; and Ward did, in the month of June, 1862, charter from me, the said Hill, a new steamer, which the Chinese officials named the Keor Jeor, after a town near the mouth of the Whangpu River, where, by the aid of Ward, they gained their first important victory over the rebels.

6th. The charter-party was written in English and Chinese, and was signed by both Ward and Ta Kee, and also bore the official chop or stamp of Ta Kee. It was for four (4) months certain, at the rate of taels (3,000) three thousand Shanghai sycee per month, with the stipulation that the same sum should be paid for each and every additional month the steamer should be used by the force, and contained an indemnity clause agreeing to pay in case of her loss a further sum of taels (12,000) twelve thousand. It was further stipulated that the charterers should furnish coals and stores, and pay all wages and other expenses while so employed, reserving to themselves the right to appoint their own officers and men to command her, and to remove them without reference to me. The charterers were also allowed at their own expense to build a gun-deck and magazine, and make such other alterations as might be necessary to fit the steamer for active service as a gunboat if so required.

7th. The steamer was taken possession of by Ward early in June, 1862; was used by him for the force until his death in the following September; then by Burgevine, his successor, until some time in January, 1863, when, in consequence of a quarrel with Ta Kee, the before-mentioned government treasurer, he was dismissed; then by the officials in command of the Sung Kong force until her capture on the first day of August following.

8th. The steamer was therefore in the constant employ of the Sung Kong force, from the time of her being taken possession of by Ward until her capture (about fourteen months).

9th. After the quarrel between Burgevine and Ta Kee, and his dismissal from the command of the force by the Taotai in consequence, all claims against the force were immediately sent to Ta Kee for payment, but, owing to the treatment Ta Kee had received from Burgevine, Woo, Taotai, refused to sanction the payment of any outstanding claims against the force. Application was therefore made to your honor,* for assistance in their collection. The result of this application was an arrangement between your honor and Woo, Taotai, by which John Kearney Rodgers and Frederick H. B. Jenkins were appointed arbitrators, to examine and pronounce upon all claims by American citizens against the force.

10th. After the appointment of these arbitrators, Ta Kee (with A. L. Freeman, esq., acting for Ta Kee), came to me and earnestly requested me to put in a claim before these arbitrators for the use and charter of the steamer while Burgevine was in command of the force, about four months, stating as his reason, that if he paid any of the expenses of the force while under the command of Burgevine, more than had been paid, without the sanction of Woo, it would not be allowed in his accounts, but he agreed to pay all due on the charter both before and after this time, to continue the steamer in use, and if I failed to collect from the arbitrators he would eventually pay me for the four months' charter also.

11th. In accordance with this request I appeared before the arbitrators, gave into their possession the charter-party, claimed under it taels 12,000 for her use four months, and was allowed the full amount claimed.

12th. This award was not paid, neither did Ta Kee pay as agreed, and the first time thereafter that I saw the steamer in Shanghai I took possession of her, with the intention of not allowing her to return to Sung Kong until the full amount due for her charter and use was paid.

13th. This action brought Ta Kee again to me, who stated that the steamer came down with a mandarin who had important business, and must return with the steamer at once, or he, Ta Kee, would have great trouble; that I need not fear, for he would soon

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* This petition was addressed to the United States consul-general.

pay me every dollar; that he was hard pressed for funds to keep the force together; that he had paid out large sums to fit out an expedition against the city of Nanking, which had failed to start, causing him much trouble to raise money at all; that there were still large sums due the English Government for guns, stores, and ammunition, which must be paid at once or they would not assist in taking Soochow and Nanking, in which case he would lose his place, his official rank, and perhaps his head; and he begged of me to wait until Soochow was taken, when he could easily raise money and would pay all.

14th. Knowing some of these statements to be true, I released the steamer, and allowed her to return, and shortly after an arrangement was made with Ta Kee whereby he agreed to pay me the full amount due on the charter, and in consideration of the amount of the charter money being so large, I agreed to sell him the steamer outright for an additional sum of taels (8,500), eight thousand five hundred. A bill of sale was made to some Chinese official whom he named, and together with a memorandum in both English and Chinese, showing the exact amount to be paid me, were deposited in the safe of Mr. B. R. Lewis, then a clerk in the United States consulate-general, to be delivered to Ta Kee whenever he should present my order for the same.

15th. None of this money has ever been paid to me as agreed, and neither the charter-party, bill of sale, or memorandum have been in my possession since delivered up as within mentioned, nor can either of them now be found.

16th. Shortly after this arrangement was made, the steamer was captured, while towing the Taotai's or Viceroy's chop to Sung Kong, or immediately after their arrival at the Sung Kong Creek.

As soon as this news reached me I went at once to Ta Kee and demanded the money due me, when he again begged me to wait until Soochow was captured, which would be in a few days at most, when he would have plenty of money, and would pay me all with interest.

17th. I waited on until Nanking was taken, after which I went to his house and again demanded the money due me. He was then sick, but promised to pay in ten days. After the ten days expired I went often to his house, but he was always too ill to see foreigners, and I never received any part or portion of the money due me for the use or loss of the steamer.

18th. After Ta Kee's death, Mr. Yates went to see the wife and heirs of Ta Kee. She did not deny the debt, but said she would pay in full on production of the charter-party, but although diligent search has been made for it, it cannot be found.

19th. In support of my own statement, that such a charter-party did exist, I hand in the sworn statements of John Kearney Rodgers and Frederick H. B. Jenkins, the before-mentioned arbitrators, and also of E. S. Benson, who for a time was quartermaster-general to the force, all of whom have seen it and had it in possession.

20th. I hand in, also, the statement of J. Howard Nichols, who purchased the steamer for me in sections as she was shipped from England, who is cognizant of her erection here by me, of her subsequent charter through Ward for the use of the force, and constant employment by the force until her loss.

21st. As collateral proof of the existence of such a charter-party, there are the undisputed facts that the steamer was in the constant employ of the force for more than one year; that she was furnished with coals by the Chinese officials during this time; that they did alter the steamer to a gunboat by building a gun-deck and magazine, and arming her as such; and that they did place their own men in command of her and discharged them at pleasure. As positive proof of this last fact, one C. F. Jones, whom they had appointed to command her, was accused, by the mandarin in charge of the steamer of having struck him, when he was immediately discharged by the Taotai and his place filled with a Chinese captain.

22d. Charles J. Ashley, quartermaster-general and paymaster of the force under Ward; J. F. McLaughlin, engineer of the steamer Confucius, also employed by the force; Mr. Lambert, who made repairs to the steamer while employed by the force, and others, both foreign and Chinese, are still residing in Shanghai, and can be produced to testify that the steamer was in the employ of the force as above stated.

23d. In view of these facts, I most respectfully beg to submit my claim, as follows:

	Taels.
For charter and use of steamer Keor Jeor from June 1, 1862, to August 1, 1863—	
14 months, at 3,000 taels per month	42,000
Indemnity for her loss, as per charter	12,000
Taels	54,000

With interest on this sum at such rate as to the court may seem just and proper.

24th. I therefore humbly pray that your honor will take such steps as to you seem fit and proper to secure payment by the representative of Ta Kee, or by the Chinese Government, of the amount of my claim as above stated, and your petitioner will ever pray, &c.

CHARLES E. HILL.

The answer.

In answer to the said petition the said defendant says as follows:

1st. That owing to the great length of time the plaintiff has allowed his claim to lie dormant, and to the fact that so many of the persons principally concerned (namely, Woo, Taoutai, Ta Kee, General Ward, and Burgevine) are now dead, the defendant finds it impossible to reply in detail to the various allegations set forth in the plaintiff's petition.

2d. That the defendant is informed and believes that the late Ta Kee did, at the time mentioned by the plaintiff, and as admitted by the plaintiff, act as banker and agent for the late Taotai Woo, and in such capacity and for and on behalf of said Taotai, did from time to time pay moneys to the forces engaged by the said Taotai in the suppression of the Taiping rebellion, and for and on behalf of the said Taotai was concerned in the recommendation of steamers to be used by the said Taotai to aid the said force. And the defendant has been informed and believes that the said Taotai did so engage several foreign steamers and affix his seal on the charters thereof, but no record has come to the defendant's knowledge of any charter of the steamer Keor Jeor, and he does not believe any charter of said steamer was ever made by the said Taotai or the said Ta Kee.

3d. That it is incredible that the said Ta Kee chartered for the said Taotai the said steamer on the terms stated by the said plaintiff, namely, for four months, at taels three thousand per month, when the price of the said steamer was fixed by the said plaintiff at taels twelve thousand only.

4th. That the defendant has been informed and believes that soon after the suppression of the rebellion a claim similar to the present one was put forward by the plaintiff in respect of the said steamer Keor Jeor, and that the same was referred to Messrs. Cunningham, T. Hanbury, and A. A. Hayes, as arbitrators, and that by their award the said claim was disallowed.

5th. That the said Ta Kee had no official seal, and it was not his practice either to sign or impress his private seal on the charter of any steamer so hired as aforesaid.

6th. That the reference to arbitration referred to in the 9th paragraph of the plaintiff's petition was, as appears by the said petition, made at the instance of the said Taotai Woo, and his honor the American consul-general, for the consideration of the plaintiff's claim as againt the Taotai Woo for service rendered the government forces, and not as against the late Ta Kee personally.

7th. That throughout the transactions referred to by the plaintiff he, the plaintiff, fully recognized the position of the late Ta Kee as agent merely of said Taotai Woo.

8th. That by the 28th article of the treaty between China and the United States of America, it is clearly laid down, "that if controversies arise between citizens of the United States and subjects of China which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations, acting in conjunction," and in accordance with such principles the lapse of time alone is sufficient to bar the recovery of any such claim as that of the plaintiff, even had it ever been admitted to be valid.

9th. Under the circumstances hereinbefore appearing, the defendant submits that there is nothing due to the plaintiff from him as the representative of the late Ta Kee, or from the estate of the late Ta Kee, and humbly submits that this honorable court should dismiss the petition of the plaintiff with costs.

Mr. EAMES first called the plaintiff, Charles E. Hill, who, sworn, deposed to the facts contained in his petition.

The Taotai asked what had become of the steamer.

The consul-general replied that all such facts would be shown in the hearing of the case, and would be explained to him as it proceeded.

Plaintiff's examination resumed:

I came to Shanghai in 1860, and left for a time in January, 1866. I was familiar with the proceedings of the force known as "The Ever-victorious army," and General Ward's command. I furnished supplies to the force, my dealings being entirely with Yang Ta Kee. The final arrangements under which Ward was to take command of the force were made through me. I introduced Ward to Ta Kee. I never had anything to do with Woo (the then Taotai of Shanghai), nor did I know that he had anything to do with the force until I filed a claim with the first arbitrators, Messrs. Jenkins and Rodgers, for only four months' charter of the steamer, because Ta Kee asked me to do so, the steamer being then in use. I never filed any other claim until this petition. I know by common report and newspaper report that the steamer was captured somewhere about the 1st August, 1863, near Sung-Kong. This information I got from Dr. Macartney, who was there. The steamer has never been returned to me, nor has any offer been made to return her to me. I see the defendant's answer speaks of my long dely in making this petition, but I repeatedly sent in a claim to Ta Kee up

to the time of his death; after that event to his wife, and until I went home in 1866, when I left the case in the hands of Dr. Yates. I returned from America at the end of 1867 or at the beginning of 1868—within a month either way. Ta Kee often promised to pay me, but when I applied to his widow and son, I was told I must wait until her period of mourning was over. While I was so waiting it happened that my own family affairs made it necessary for me to go home. Ta Kee, and others connected with him, never denied that the steamer had been used. I have never received one cash for the use of the steamer or for indemnity on account of her loss. When I returned to Shanghai in 1867, or beginning of 1868, I was in the employ of Jardine, Matheson & Co., and they sent me to New Chwang, where I remained three years. After I left New Chwang I again went home, and when I returned after that occasion, almost immediately Mr. Seward went to America. These circumstances will account for a great deal of the delay that has occurred. As soon as Mr. Seward returned to Shanghai I lost no more time, but immediately entered my plaint.

Cross-examined by Mr. Drummond:

On my first departure from Shanghai I was absent about two years. It was in March, 1868, that I left Shanghai for New Chwang. I remained at New Chwang until the fall of 1870; not quite three years. I then returned to Shanghai. At that time I had business that took me south, to Canton and other places, and also to Japan. I left Yokohama in February, 1871, for America, and remained home one year, returning to Shanghai about May, 1872. I have remained here, with the exception of short absences to Peking and elsewhere, ever since my last arrival. I have talked over my private affairs with Dr. Yates frequently, and have probably had casual conversations on the same subject with others of my friends. I can give you the names of some with whom I have conversed; they are Mr. Seward, Dr. Yates, Mr. Eames, Mr. Bradford, Mr. Vail, Mr. Keswick; with the latter, because he was agent and trustee for the other party. At New Chwang, too, during the two or three years I was there, I dare say I talked to some persons also; it was very likely in a small community like that. I have not, to my recollection, made this claim the subject of special conversation. I spoke to Mr. Albert Knight, at New Chwang, but do not remember any one else except Dr. Yates, who was with me at New Chwang for a time. I cannot specify any others. I claim 54,000 taels and interest. I have never forgotten the fact of my having this claim. I have never made my property or expectations in regard to this claim the subjects of special conversation. I am not in the habit of mentioning my private affairs or special prospects to any one promiscuously. Dr. Yates is, I believe, the only person who knows how much I am probably worth; but I do not believe there is one man in the world who knows what I owe, or who owes me, or what I am worth. I may have mentioned the particulars of my property to one or more of my private friends.

Only one charter-party was signed by me, but my name appears in the charter-party twice. It was also signed by Ta Kee and Ward. The latter signed only by way of approval, and for no other reason. The charter-party proper was supposed to be in Chinese, but I wanted a transiation of it in English. The charter-party was never renewed by Burgevine. I am not aware that he ever renewed the charter-party. He never did so with me.

The Taotai asked if, when the steamer was seized, Ward was still living.

A negative reply was given.

The Taotai asked what had become of the charter-party?

A reply was given that the plaintiff did not know. It had never been in his possession since it was given up at the first arbitration.

Cross-examination resumed:

When Ward died I took no steps with regard to the steamer or as to the renewal of the charter-party. I saw Ta Kee sign the charter-party. I cannot read Chinese, but I know he took a Chinese pencil and wrote something. I do not know what characters he wrote. He signed what he said was his name. I have no doubt about its being his name. He also affixed a Chinese stamp to it; what we designate by the name of "chop." I saw him affix that also. I cannot describe what the chop was like. It was not much larger than the hong chop that is used by compradors, rather longer than wide. It might have been about an inch long. The charter-party was signed at Ta Kee's private house, on Honan road, where I did all the business with Ta Kee and Ward. Ta Kee told me it was his own chop. I never saw him affix the same seal to any other document, nor ever had any business with him requiring a chop seal. I do not know whether Ta Kee had any other seal of the same kind or whether he had an official seal. I saw the charter-party after it was signed and sealed. I held the charter-party in my possession until some time after a man named Benson was appointed quartermaster-general under Burgevine. I kept it in my possession until I was called upon by the arbitrators to produce it in evidence, as to chartering the steamer for the four months. I then gave it up, and have not seen it since. When I had the charter-party in my possession, I have no recollection that it bore any other stamp or chop than

the one I have mentioned. I know that when the Nanking expedition was fitting out the Taotai's chop was required. That was under Burgevine. I know that by seeing the other charter-parties afterward, but I did not know it at the time. General Ward, Ta Kee, and myself were present when Ta Kee signed and sealed the charter-party in question. Rodgers is an American citizen. I have put in an affidavit by him; I do not think he can read Chinese. Ta Kee went with me to Rodgers, and acknowledged the charter-party, and I believe we also went to Mr. Jenkins; but I have not thought of that matter at all; you can ask him, if you like. Jenkins was chosen as an arbitrator entirely by Woo. He speaks and reads Chinese well. The steamer was chartered for four months certain, at taels 3,000 per month, and her value was set down at taels 12,000, though her cost to me was about taels 25,000. In case of the steamer being lost within the four months, I should have received taels 12,000 only and the money that was due upon her at the time; supposing she had been lost just after starting, I should have got taels 12,000 only. I did not agree with Ta Kee to wait until the whole of the province of Kiangsu was retaken from the rebels to be paid my money. When the disturbance took place with Burgevine, they were in great straits for money, and at the same time had to reorganize the entire force, purchase heavy guns, &c. I was not in particular want of money at the time, and agreed to wait from time to time for payment. While I was waiting patiently for this money, I was, as a merchant, getting paid for other goods, as were also other merchants on account of other transactions. Ta Kee paid me $10,000 on account, but it was for the firm to which I belonged, and not to myself individually. My own personal money I waited for; I did as I liked about that. Ta Kee and myself were friends, and I did more for him than I would for any other man in China at the time. When Ward lay wounded, I gave up my own room to him, and sat up and nursed him. Ta Kee thought he was then going to die. My waiting for my money was in fact a matter of arrangement between Ta Kee and myself, because he said if I pressed him for payment it would inconvenience him. Ta Kee was alive when the matter was first submitted to arbitration, and admitted my claim at the interview with Rodgers, one of the arbitrators. Mine was only one of a good many claims, and was included among them at his special request. He said if he paid any of the claims which arose under Burgevine's command, he would not get his money back again from Woo, Taotai. I therefore allowed mine to go in with the other claims, and depended entirely upon Ta Kee for payment. The difficulty in the way of paying me was not because Woo, Taotai, would not sanction my claim, but because of want of funds. I am not aware that any application was ever made to Woo, Taotai, on the subject. The newspapers reported at the time the vessel was taken by the rebels that such was the fact. Of my own positive knowledge I am not aware that Burgevine had anything to do with her capture, but it was the general report that he had. The Chinese name of the steamer was Keor Jeor.

I do not know who gave her that name. Up to that time the Chinese had only got three steamers. I cannot tell you of any other steamer named after the name of a place, nor do I know what the Chinese names of steamers mean. There is the Yung-ching for instance. I do not know what that means. I do not know either that the Chinese name their steamers after quite a different principle to the names of places, such as "Good Luck," "Good Fortune," or some such names. I do not know whether, after Burgevine's dismissal, the steamers were in the hands of a person named Holland. I do not think that Colonel Gordon had anything to do with her. I never made a claim upon either of those, or upon Dr. Macartney, for payment of this money. I do not know that she was at one time in the possession of Dr. Macartney at Shanghai. I have been told that she was, but I was not here at the time. It was after she had been recaptured. I was told she was here, having new boilers put into her. I do not know that Ta Kee was ever disgraced. He had some difficulty, but I never knew the facts; he would not be likely to tell me. I do not recollect if it was a matter of public notoriety. I never applied to any Chinese authority for payment of my claim. I agreed at one time to sell the steamer to Ta Kee for an additional sum of taels 8,500, and a bill of sale was made out then. That was in June or July, 1863, and was arranged on the ground that the sum due to me was so large. At the expiration of the four months Ta Kee had the right to continue the use of the steamer as long as he chose on the same terms. It was so stated in the charter-party. The steamer was not taken by the rebels during the currency of the first four months, nor until ten months afterwards, and she was in use altogether fourteen months. They never gave me notice that they wished to renew the charter-party at the same rate, nor that they wished to break the charter. No fresh agreement was made between us. I looked upon Ta Kee, at the time the steamer was chartered as chief of Ward's force. He originated the force, and undertook all things necessary for it; and I do not believe any one ever saw Woo, Taotai, in the matter. Ta Kee did all this, not as agent of the Chinese Government, but for the purpose of suppressing the rebellion; the clearing this province of the rebels. Ta Kee acted as a sort of banker for the forces, and paid them. He was the head of the Hai-kwan Bank at the time. Ta Kee acted from patriotic motives, I believe, all through, and I also believe him to have

been a good and conscientious man. I further believe he did all this on his own private account; that is, when he started the force, and not as agent for China. He made a good deal of money out of the force, and I think he was the father of the whole thing, without any communication from his government. I cannot speak more positively, and can only express my opinion. The award of Jenkins and Rodgers, the first arbitrators, was in my favor, granting me all I asked on the four months' charter-party. I know there was another arbitration, before Messrs. Cunningham and Hanbury, but cannot say at what time afterwards. I had no power to enforce the arbitration of Messrs. Jenkins and Rodgers. I left that in the hands of the authorities. I do not know the result of the reference to Messrs. Cunningham and Hanbury, and never asked what the result was. I left all the papers having reference to my claim in this case in charge of Mr. Lewis, who was clerk in the shipping-office at the time. They were placed in a pigeon-hole by him. Those papers stated what was due to me. I have not seen them since. I believe they were lost, bill of sale, charter-party, and all. I have not seen them since my return to Shanghai, in the beginning of 1868. When I first went to Ta Kee's widow about the matter she did not ask to see the charter-party, but only said her period of mourning was not over, and that I ought not to ask her to do any business.

The TAOTAI. How long after the charter was made was the loss of these papers discovered?

PLAINTIFF. Not till about five years afterwards.

The TAOTAI. And have no steps been taken to recover them?

PLAINTIFF. I took all the steps I could think of. I did not file the petition until ten years after the occurrences, for the reasons I have given before. It did not occur to me that it would be dangerous to wait so long without filing a petition. The subject has never been allowed to drop, and I have never lost sight of the claim, but always had some one looking after it every two or three months.

Re-examined by Mr. EAMES:

I understood by Ward's signature that he was merely a witness to the matter between Ta Kee and myself, not making him in any way responsible to me. After Woo, Taotai, came into office, they continued to use the steamer, but took no exception to the charter-party.

Mr. Eames would make a suggestion. As the case was likely to last all through the winter at the present rate, he suggested that he should simply put in Mr. Jenkins's (the next witness) statement as sworn to, and Mr. Drummond could proceed with his cross-examination at once.

F. H. B. JENKINS sworn.

The following affidavit was read:

I, Frederick H. B. Jenkins, an American citizen, residing at Shanghai, in the Empire of China, make oath and say as follows:

1st. That in the year eighteen hundred and sixty-three (1863), and some time after the death of General F. T. Ward, there were certain claims against the Chinese Government, contracted by said Ward and his successors; which said claims were disputed by Woo, Taotai, and payment refused.

2d. That in consequence of this refusal on the part of said Woo to pay said claims, an agreement was entered into between George F. Seward, esq., United States consul-general, and said Woo, Taotai, by which said claims were referred to arbitration, and in accordance with this agreement I, the said F. H. B. Jenkins, was appointed by Woo as arbitrator to act on his behalf, and one John Kearney Rodgers, an American citizen, then residing at Shanghai, was appointed by the said United States consul-general as arbitrator to act for him on the claims of citizens of the United States.

3d. That among the claims referred to us for such arbitration was one of Charles E. Hill, an American citizen residing at Shanghai, for the charter and use of a steamer called the Keor Jeor.

4th. That the claim of said Hill was based on a charter-party, written in both the English and Chinese languages, and signed on the English side by said Ward, and on the Chinese side by one Ta Kee, a Chinese banker and government treasurer, and sealed with his chop or stamp, and was also signed by said Hill.

5th. That during said arbitration said charter-party was in the possession of said arbitrators, and upon said charter-party and evidence that said steamer Keor Jeor was in the active employment of the Chinese forces during the whole time for which payment was claimed, said arbitrators decided and adjudged that the said Hill should receive the whole amount claimed by him.

6th. That during said arbitration I had frequent opportunities of examining said charter-party, and at the time was familiar with the terms thereof, and of these terms, to the best of my recollection and belief, two points were that the charterers were to pay for the use of said steamer taels 3,000 per month, and an indemnity clause binding them to pay, in case of a loss, a further sum of taels 12,000.

7th. That at the conclusion of our labors as said arbitrators said charter-party was taken possession of by said Rodgers, to be by him returned with other papers to the United States consulate-general.

8th. I am satisfied and fully believe that at a subsequent date I have seen said charter-party among the papers at the said consulate-general referring to what are known as the Ward claims.

In reply to the consul-general, witness now said the contents of the affidavit were true.

Cross-examined by Mr. Cowie:

At the time named in the affidavit I was trying to make a living. I forget in what way. I did all sorts of different things. I owned steamboats for one thing. At the time of the arbitration I was engaged in general business. I had transactions with Woo, Taotai. I do not recollect that I have any claims against the Chinese Government; I might have. Mr. Hill's claim was brought before us to decide upon, as near as I can recollect, with some other claims of foreigners, against both Woo and Ta Kee. I was appointed by Woo. We went through all the bills presented to us and examined them. Not one of the claims submitted to the arbitrators was paid. I saw the charter-party alluded to, and, to the best of my belief, it was signed by Ta Kee. I have stated so in my affidavit. It is a long time to remember things exactly as they occurred. I do not understand Chinese very well. I think I might understand what the characters were that Ta Kee put to the charter-party. I think it was also sealed. I cannot state anything more than appears in my affidavit. I do not remember whether the Taotai's seal was on the charter. I know the steamer was employed with the Sung Kong force. The officers of the force used her. My deposition and affidavit were written by Mr. Hill, and are as near correct as I can recollect. I dictated a portion of them to him, but before I swore to them I read them through several times, and am sure they are correct. I have no further interest in this claim than any of the others. I do not know whether the award was enforced; our work was done in making it.

A few unimportant questions closed this witness's cross-examination and the court adjourned.

SHANGHAI, *January* 12, 1875.

The court proceeded to hear further evidence, and the first witness called was C. J. ASHLEY, who deposed:

I am an American citizen. I was at one time employed with the Soong Kong, or Ward's force, in suppressing the Taiping rebellion. I mean the "Ever-victorious army." I joined it in the early part of 1861, and remained in it until 1863. My position was quartermaster-general and paymaster. There was no difference in the officers of the force until after Ward's death, in 1862. There was no change whatever in the Chinese management of the force while I was with it. My chief dealings for funds, &c., were with Ta Kee. I had no dealings with any other Chinese officials. I received the funds for payment of the foreign officers, steamboats, and the troops generally from Ta Kee. I remember the steamer Keor Jeor being employed with that force. In the early part of summer, think in May, I was ordered by General Ward to take an engineer, and make a trial trip with her. I did so, and reported favorably to the general. There were some little alterations made in her, and she was turned over to the force. She was used while I was with the force until I went to Hong-Kong, in September, 1862, in connection with the force. After that I saw her no more, but heard by common report that she was still used. My offices, &c., were then turned over to Benson. I went to Hong-Kong for arms and ammunition for the Soong Kong force. I furnished coals and stores afterwards for the steamer. She had no name that I knew of at that time. The engineer I took was the second engineer of the Zingari. I do not remember his name; he was drowned during the trial trip. He was a British subject, and his name will be found probably at the British consulate. All I know of Woo, Taotai's, connection with the force was that I was at times employed by Ward to go to him with dispatches. I never saw the charter-party. The steamer was used as a dispatch-boat, but she had a gun put on her, to fight when up the creeks. There were several other steamboats here, but they were larger, and employed in the silk trade. Fletcher and Co. had two or three. I cannot say positively that they were here at the time the Keor Jeor was chartered. They were here after the rebellion. The Keor Jeor's charges for running were more economical than any other boat. She was very small. I only know by hearsay about her capture. It was common report that she was captured up the river.

By Mr. DRUMMOND:

I had my chief dealings with Ta Kee, and with no one else. I never saw Ta Kee sign any papers himself, but I saw his compradore, Li, do so for him. He is in court.

(Witness identified him).

He was the man who invariably handed to me all checks for payment of steamers,

&c. I simply went there with my bills for expenses, and Li read them over and paid me. Ta Kee was at times there, and at other times he used to take them to Ta Kee's private room, and then bring me the money. I have often seen native chops on Ta Kee's writing-table. I cannot read or write Chinese. I never saw Woo, Taotai, sign or seal any documents in connection with the force. I always saw to the correctness of all payments in connection with the force. It was my duty to do so. I think there were eleven steamers in connection with the force. They were the Confucius, Pluto, Zingari, Willamette, Hyson, Bopeep, Cricket, Keor Jeor, Rose. I can hardly remember them all, it is so long ago. I think there were eleven, but do not remember the other two. The Confucius and Pluto were guild boats—I believe the Shantung guild. I do not know how the other boats were engaged. It was commonly understood that the Rose was Ta Kee's own property. The Zingari was a Chinese-owned steamer. The Hyson was purchased from Russell & Co. by General Ward. The Martin White, a towboat, was also used in the force. She was owned half by Ward and half by Ta Kee. I know about the Keor Jeor simply because Ward ordered me to take her on the trial trip. It was reported that she belonged to Mr. Hill. I had no authority from Mr. Hill to receive the vessel. We took her from Hunt & Co.'s wharf. Mr. Hill was a partner there at that time. She was taken from their machine-shop. As paymaster of the force I paid the expenses of those steamers. The money for the boats at Soong Kong was paid by the paymaster there. I sent the money to him. The boats at Shanghai were paid by me. I only paid the portage bills. I do not know who paid the hire of the steamers. The steamers that were chartered I know Ta Kee paid, because I chartered them for him myself. I did not charter all the steamers. There were some chartered by other people. I chartered four before I went to Hong Kong.

The Taotai asked if the witness could remember the four he chartered.

WITNESS. The Nanzing, Lotus, Shum-li, and Annette. The charters were drawn up for me in Trautmann's office. I took them to Ta Kee, and he approved them.

Cross-examination resumed:

Ta Kee did not sign them. I think the only sealing was the chop that Li used to put on them. I did not see him attach any seal to them; but I think that was the way it was done. I seldom saw the Taotai when I went to his Yamên, but sometimes I received a dispatch back in answer to the one I took. I never got any orders from the Taotai. I believe all the orders for the force came from General Ward. I do not believe he received any orders from Woo or any one else. I do not know whether Ta Kee gave orders to General Ward what was to be done. I never heard any dispute as to the hire of the steamer Keor Jeor. There was no dispute while I was in the force; and the first I heard of one was after the first arbitration in 1863 for settling the claims of the Soong-Kong force. I do not know who were the first arbitrators; I never was present at any of the meetings; I know nothing of the second arbitration; I know there was a first and second arbitration, nothing more. I had a claim, which was against the Soong Kong force; it went in with the first arbitration; it is not settled yet. I heard of no disputes in connection with the steamers; so far as I know there has been no trouble with any of the other boats. The money for the Hyson came from Ta Kee's hong; that was the only vessel I saw cash paid for. The Keor Jeor was only used for the Soong Kong force, while I was in it, as a gunboat and dispatch-boat; she was not used privately by Ta Kee that I know of. I did not see the Keor Jeor at Shanghai after she was blown up; I believe she was blown up and sunk during an engagement between the imperialists and rebels in the summer of 1864, but I am not sure as to date; she was then in the hands of the rebels. I never heard any reason given why the payment on account of the Keor Jeor was disputed, nor that Mr. Hill ever attempted to seize the steamer. I do not know that Ta Kee was the agent for the suppression of the rebellion; we looked upon him as one of the head men, and went to him for money. I supposed that Woo was of higher rank than Ta Kee; I did not know that Ta Kee was an official; I knew nothing as to his official capacity whatever; I simply went to him for money and stores.

Capt. JOSEPH ROUSE, deposed: I was employed on the Confucius, and was engaged with the Soong Kong force from early spring, 1863, to 1864; I remember the Keor Jeor being employed for the force; it was said by general report that she belonged to Mr. Hill. I think she ceased to belong to the force through being captured by the rebels in 1863; I think we were sent to try to recapture her.

The Taotai asked if the witness knew where she was captured?

Witness replied at the east or water gate of Sung Kong.

The TAOTAI. And that you know by others telling you?

WITNESS. Yes.

Examination continued:

From the capacity and work required of the Keor Jeor, I think she was a very economical boat.

The Taotai asked who was captain of the Keor Jeor when she was captured?

WITNESS. She was in the hands of Dr. Macartney. She had had two or three captains at different times.

The TAOTAI. Was Macartney captured in her?

WITNESS. No; I believe he was up in the city at the time.

Cross-examined by Mr. COWIE:

I was master of the Confucius; she was employed to protect the junks in the silk-trade along the coast; she belonged to a guild—a Chinese chamber of commerce. When we were employed with the Sung Kong force there was always a mandarin on board from whom we received our orders and I always knew when we were employed for the force, because we received orders and coals, &c., through the mandarin; I never knew Ta Kee in connection with the force. I knew the Keor Jeor was at that time employed as a dispatch-boat running to Sung Kong; I do not know of her being employed except in connection with the government forces. I never knew anything of this claim until within the last four months. I received my wages from the mandarin on board; the money came, I believe, from the Shanghai junk guild; I do not think it came from Ta Kee. I was formerly, 1863, in the harbor-master's office, but left voluntarily.

Re-examined by Mr. Eames:

Our ship, the Confucius, was sometimes sent up to Tientsin, but I never knew the Keor Jeor employed with any other than the Sung Kong force. I think I can swear to that as a fact.

Col. EDWARD FORESTER deposed:

I am an American citizen, and was engaged in Ward's force from early in 1861 to early in 1863. I was second in command, next to General Ward. I always had general control when Ward was absent. He was seldom in Sung Kong, which was my headquarters. The force originated with Ta Kee, as the moneyed man, and Ward did the work. I looked to Ta Kee for my authority. He was known as the originator, the getter-up, of the force, and we looked to no one but him. Eventually Woo had something to do with it. The first time he appeared upon the scene was when Burgevine and Ta Kee had trouble. I never knew Woo in connection with the force before that time. It was in February, 1863. Ta Kee had nothing to do with the immediate command in the field, but he used to give directions where we should go. I am speaking of this province, and only before the time of the dispute with Burgevine. After this time things changed, and Li Futai took command of the entire force. Before this the Chinese officials by my request interfered with the force, but not without my request. I remember the Keor Jeor. Mr. Hill asked me to use my influence with Ta Kee and Ward to get her chartered. She was not then completed, but was in the water. That was about April, 1862. General Ward thought she would be a first-rate boat for the service, and went with me to Ta Kee, and she was chartered. I never knew whether there was a written charter or not. She was employed, and remained in the service until March, 1863, but I cannot say how long after. She was not, to my knowledge, in any other service than with the Sung Kong force. She was under the control of Ta Kee, General Ward, and myself. There were two or three reasons why she should be employed. At that time we were entirely cut off by the rebels from Sung Kong by land. The other boats were side-wheel boats and expensive, and I recommended the Keor Jeor because she was low and narrow, and we could get her at any time under the bridges and into the city of Sung Kong, where no other boats could go. Her consumption of coal was I do not think so much as the least steamer we had before. I know nothing of her loss. I can be positive that the amount of her charter was to be taels 3,000, or $3,000, per month. The term taels was more frequently used in those days, and that gives me the impression that it was taels. I saw the Keor Jeor the last time between the 6th and 10th of March, 1863, when I left for home.

Cross-examined by Mr. Drummond:

I know nothing of the chartering of the other steamers, except by reputation. I heard General Ward speak of their expenses, but I know nothing about them. I never saw the charter-parties of any of the other steamers. I do not know if there was one for the Keor Jeor. I have every reason to believe there was. Ward had nothing more to do with the Chinese Government than I had. It was Ta Kee, not Ta Kee and Ward. I do not know who paid Ta Kee except the government. I think he got something for every place recaptured from the rebels. When the original owners went back upon their land, they paid 33⅓ per cent., which Ta Kee received, and out of it paid the force. I have every reason to believe it is so, as it was so translated to me by Ta Kee, some mandarins, and smaller officers. I cannot say who employed Ta Kee. Li Hung-chang was Futai at the time, and Woo was Taotai. I cannot say if Ta Kee got his authority from the provincial government or from Peking. I knew afterward that Li Hung-Chung was the man, but whether he acted by authority from Peking I do not know. Ta Kee told me he had the authority of the government to raise the

force. The Soong Kong Foo, a very high officer, never took any interest in the force, and we never had a bag of rice from him. After the dispute with Burgevine, Li, Futai, came forward and took the command of the entire force. After this time I had communication with Li, Futai and Woo, Taotai. They offered me the entire command of the force after Burgevine's dismissal. There was mutiny under Holland's command, and Li, Futai, offered me $1,000 to go and quell it. I went, and the mutiny was quelled. When I last saw the Keor Jeor she was under Holland's command, that is, in connection with what is known as Ward's force. I never heard that Hill tried to seize the steamer, and know nothing more of her, as I went home in 1863.

Re-examined by Mr. Ames:

The mutiny at Soong Kong arose in consequence of Li Adong being put in command with Holland.

Mr. Eames here submitted several affidavits of other witnesses, who were absent.

Mr. Drummond objected to the admission of those documents; and thought it was only proper that all the witnesses should be heard in court.

The Taotai, on the request being interpreted to him, declined to receive the affidavits. The witnesses must be present in court.

There being no other witness present to-day, the consul-general, at the request of Mr. Cowie, made the following statement: When General Ward died, Burgevine succeeded to the command, at the recommendation of Admiral Hope. He was not at all successful in making things go smoothly at Soong Kong. At the latter part of 1862 or beginning of 1863, I heard that Ta Kee had refused to give any more money. I heard also that Burgevine came to Ta Kee's house, and that there was an altercation. Burgevine then returned to Soong Kong, and received orders to turn over the command to some one else. He refused to do so, and said he should hold the steamers there at the time. Among them was the Confucius. I advised him to reconsider his decision, and he appeared soon afterwards at Shanghai, on board the Confucius. He represented to me that there were large amounts due on account of the forces. Woo then asked that I would remove Burgevine from the steamer and return her to the guild. I asked Woo what agreement could be made to pay the claims, and it was arranged that a commission should be appointed, to which they should be referred, he to appoint one commissioner and I the other. When that paper was drawn up and signed, I requested Burgevine to leave the steamer. The Taotai named on his own part Mr. Jenkins, and I named Mr. Rodgers, managing partner of Wetmore, Cryder & Co. An advertisement was inserted in the papers asking all parties to send in their claims to the commission. After about two months, the commiss on reported to me. I reported to the Taotai the result, and asked him to make payment of the sums awarded. The Taotai said that many of the claims were not good ones, that he would pay some of them, but declined to pay in full. He entered into details, and I found that some of his objections were well founded. I found that the cause lay not with the commissioners, but in consequence of a failure on the part of the Taotai and Ta Kee to enter full statements. I then thought it right to enter into an examination of these claims myself. This examination occupied several months. We arrived at a result, which showed that some of the claims which the Taotai had objected to were good, and he then agreed to admit them. I asked him to pay the sums he admitted, but he still refused, because Benson, who acted as paymaster under Burgevine, had not sent in full statements. I then proposed that a second arbitration should be called, to examine the claims more fully and his charges against Benson. He agreed to this, and documents were fully drawn up in Chinese and English. The second arbitrators were Messrs. Cunningham and Hanbury. I had myself rejected some of the claims which appeared bad. None of the claimants appeared before the arbitrators. Most of them were my own countrymen, and they appeared content to leave their matters to me.

The arbitrators brought in their deci-ion in February, 1864, but whether this claim of Mr. Hill's, was urged before Messrs. Hanbury and Cunningham, I do not remember. I remember that Mr. Hill had made some sort of sale of this steamer to Ta Kee, and that he was dealing with Ta Kee himself; and I remember very distinctly thinking that if any of these claimants can manage their own business, so much the better. My impression, therefore, is that Mr. Hill's claim was not submitted, but that those of some foreign officers on board the Keor Jeor were. The arbitrators admitted very many claims which the Taotai had rejected. They decided that Benson had done nothing wrong. I called upon the Taotai to make payment upon the award. In response he sent me a check to cover the claims he had never disputed. The others, which he had disputed, but which were admitted by the arbitrators, he refused to pay. The sums intrusted to my hands were duly distributed; the others remain unpaid to this day.

Mr. Eames said there were several other witnesses to be examined, and he might include among them Dr. Yates, who probably would not refuse to make a statement.

Dr. Yates said he would not object to state matters so far as he knew them.

The consul-general remarked on the inadvisability of Dr. Yates, looking to the position he held in the court, being called upon to make any statement at all.

JANUARY 17, 1875.

A further hearing in this case was held to-day. Mr. I. B. Eames appeared for the plaintiff, and Mr. Drummond and Mr. Cowie for the defendants.

WILLIAM E. SHERMAN was first called and deposed:

I am an engineer and machinist, and am an American citizen. I arrived in Shanghai about the middle of April, 1863. I got employment the day afterward, at Thomas Hunt & Co.'s machine-shop. I remained there until some time in September or October following. I was engaged in setting up sundry small steamers. One was a steamboat for Fletcher & Co., the Yuen-fah. I think the Haining had been finished shortly before that. Two other small steamers were set up in the same yard at a later date. I remember the Keor Jeor, and saw her soon after I arrived here. There were none of the same class then running here. I went up to Tun-ka-doo with Captain Jones to arrest her. I think that was about June, 1863. I had no communication with Mr. Hill about it. I only heard from Captain Jones that there was some trouble about money matters between Mr. Hill and the Chinese. He asked me to go and get the steamer and bring her down before Hunt & Co.'s—what is now the Hong-Kong and Shanghai Bank. We did so, but I think she went away again some time next day. I do not remember that Captain Jones told me under whose instructions he acted. I inferred that he received instructions from Mr. Hill. The other small steamers were about the same size as the Keor Jeor—a little larger, with a greater draught of water. I do not think those other steamers could have gone up to Soong Kong.

(By the Taotai.) I was on board the Keor Jeor at the time I speak of.

The witness was not cross-examined.

Mr. EDWARD CUNNINGHAM deposed:

I remember having been one of the arbitrators on this matter of the claim of Mr. Hill. I should state that after ten years' interval since the arbitration my memory was indistinct, until I had refreshed it by reference to documents in the possession of the United States consulate-general. The claim was presented to us, and it was disallowed because there was no evidence of a properly executed charter-party to the Chinese Government. If a charter-party had been produced, I do not think it would have been sufficient for us to have allowed the claim upon against the government. I should add that Ta Kee acted for the Chinese Government. Mr. Hill did not appear before us. We did not notify him to appear. I sold the Hyson to the Chinese Government. I should say she was larger than the Keor Jeor, and more than twice as valuable. We sold her for 30,000 taels. That was in 1862. The Hyson could have gone up to the water-gate of Soong Kong, but not through it.

Witnessed resumed:

The Hyson was a side-wheel steamer. I remember the Keor Jeor; steamers of this description were very valuable at that time, and very large prices could be got for them; I should say that 3,000 taels per month was not exorbitant for such a steamer at that time.

By Mr. Drummond:

I acted as arbitrator on behalf of American citizens, through Mr. Seward; Mr. Harbury acted for Woo Taotai, on behalf of the Chinese Government. As usual in arbitrations we acted jointly and equally for both sides; there was no difference between us. The claims were placed before us by Mr. Seward; no claims were put before us by any one else or through any other channel; the evidence placed before us was chiefly documentary—evidence taken before the other arbitrators. That is as near as I recollect. The claims were solely between foreigners and the Chinese Government; no claims were made against any Chinese official personally; they were against Woo, Taotai, as representing the Chinese Government, at least I presume so, excepting certain personal claims against Woo on the part of Ward's estate. I think we called for further evidence both for and against the claims, before making our award; we endeavored to satisfy ourselves in every possible way that a claim was improper before disallowing it. A copy of the first award was placed before us, together with the other papers; we noticed that the claim of 12,000 taels was awarded by the former arbitrators; I do not think there was any reference in that award to the charter-party, or to evidence supporting it; we went entirely upon the documents, and paid very little attention to the first arbitration; we did not think it was carefully done; we had a strong impression it was not satisfactory, and thought it easier to go through it again. I do not recollect asking for a charter-party. Whenever we were in doubt about a claim, we asked for other documents; I have no doubt we did ask for special information as to this claim, it being a very large one, and having been allowed once. I remember nothing about documents having been lost in connection with this claim; I do not recollect whether we considered it a claim upon the private estate of Woo, Taotai or Ta Kee; we thought those claims we allowed were supported by sufficient documentary evidence. They were all claims in connection with the suppression of

the rebellion; and all such claims were regarded solely as properly to be made against the Chinese Government; I supposed the claims in general had no reference to private individuals, with the exception of the one against General Ward's estate. If we had a charter-party presented, with the seal of Woo, Taotai, affixed, I think we should have considered that sufficient to have fixed the government. Ta Kee was undoubtedly acting as a sort of broker between the officers and the Chinese Government, but he had no official position that we knew of.

Re-examined by Mr. Eames:

We made no special inquiry as to this claim of Mr. Hill himself.

The Taotai asked if the witness remembered casting out several other claims, one of 895.78 taels for Hunt & Co.

Witness said he could not remember without referring to the award, and the document was handed to him. He then answered in the affirmative; and, in reply to other questions from the Taotai, mentioned other and smaller accounts which had been rejected. Mr. Hill's claim of 12,000 taels was also thrown out, as against Woo, Taotai, for the Chinese Government.

J. I. MILLER deposed:

I am a British subject, and was in Shanghai in 1862 and 1863. I was in the house of Jarvie Thorburn & Co.; I was in the silk-room. There was considerable difficulty in those days in getting silk down from the country. I cannot say at this period of time that I remember the names of steamers so employed. A small steamer that could have gone through the water-gate of Soon Kong would have been very useful. The usual price for conveying silk down was 10 taels a bale, either by steamer or foreign house-boat. I do not think 3,000 taels per month was an exorbitant price to charter a steamer for at that period. She might have earned four or five times as much by chartering her to Chinamen.

A. C. WESTALL, a British subject, was the next witness, and gave exactly corroborative evidence.

PETER JACOB RHODE, a German subject, deposed:

I was in the Soong Kong Force, "The Ever-Victorious Army." I joined it in March, 1862, and remained till it was dissolved in May, 1864. I held the rank of colonel. I remember the Keor Jeor. She was in the service of the force from May or June, 1862, till she was taken the next year by Burgevine. She was a screw-boat, about 70 feet long, and drew from 2½ to 3 feet of water. She was the only boat we had that could go up to Soong Kong. A steamer at that time, with a gun, as the Keor Jeor had, had a considerable effect upon the rebels. There was no free communication by land between Shanghai and Soong Kong. She was an economical boat, consuming about a ton of coal in 24 hours. The other steamers were much more expensive. I had no knowledge of, or communication with, Ta Kee.

(By Mr. COWIE.) I know nothing about the chartering of the Keor Jeor.

GUSTAV T. BAFFY deposed:

I am a Prussian. I was in the Soong Kong Force late in December, 1862, and remained till it was dissolved in 1864. I was captain in the first regiment. The Keor Jeor was employed to run dispatches between Shanghai and Soong Kong. She was taken by the rebels in 1863. She is now running for the Chinese between Nankin and Nganking, on the Yangtsze River, and to Soochow. I was told that by a Chinese, and do not know it of my own knowledge.

JONAS HOWGATE, a British subject, deposed:

In the latter end of 1862, I was engaged in the Shanghai arsenal at that time, teaching the Chinese to make shot and shell. It was afterwards removed to Soong Kong, and I was there in the same capacity, remaining in it for two years. The Keor Jeor came up to Soong Kong, and to the best of my recollection Dr. Macartney and Dr. Jamieson were on board. Some men boarded her and took her away. Dr. Macartney and Dr. Jamieson came into the city about four o'clock, and said the steamer had been taken from under their feet. When Soochow was given up to Li Hung Chung, the arsenal was removed to Soochow, and I saw the Keor Jeor there. It was close to Li's Yamen. Her bows had been blown out, and she was brought there by the mandarin who raised her. A man named Reed, living in Shanghai, was to receive $500 for raising her, and he built a coffer-dam around her and so got her up.

The Taotai asked if Reed was here now.

Witness replied that he did not know. All he knew was that the boat was raised, that houses were built upon her, and that she had steam up. The man who offered the $500 was a Chinese mandarin, who has a small arsenal next to the other, and made mortars, &c., for the force. He was a government official.

The Keor Jeor was used by the Chinese authorities in connection with the Soong Kong Force. She was peculiarly adapted for going up small creeks in shallow water.

(By Mr. COWIE.) I am of opinion that when I was going to Hankow in the Shanghai, I saw a steamer very like the Keor Jeor. I cannot swear that, but I could soon prove it by the plates that were put in her at Soochow. I cannot say anything as to the chartering of the steamer.

ALFRED SILVERTHORNE deposed:

I am a British subject, and was connected with Ward's force from May, 1862, till the latter end of 1873. I was major in command of the Third Regiment. The Keor Jeor was in use when I joined the force. She was handy for going up the Soong Kong Creek. We had no other steamer that could do it. I remember nothing more about the Keor Jeor.

J. F. MACLAUGHLIN deposed:

I am an American citizen, and was engineer of the steamer Confucius during the rebellion, when Burgevine was in command. I remember the Keor Jeor as engaged with that force. I do not remember when she ceased to be so employed. I do not think there was then any other boat that could go up the Soong Kong Creek. I was sent up to try to recapture her after the rebels had taken her.

(By the Taotai:) Captain Rouse was then in command of the Confucius, and, of course, he gave me the order to go.

The case for the defendant.

C. E. HILL
vs.
ESTATE OF YANG TA KEE.

JANUARY 23, 1875.

Mr. Drummond put in as evidence for defense a document marked "A." This is the award of Messrs. Jenkins and Rodgers, the first arbitrators, to settle certain claims against the Chinese Government. Among the claims shown as allowed is one of C. E. Hill for taels 12,000, for the charter of the steamer Keor Jeor.

Mr. Drummond then put in the document marked "Aa," which is a bill by Mr. Hill for the use of the steamer Keor Jeor during January, 1863, for taels 3,000, as follows:

"*Imperial Chinese Government to C. E. Hill, Dr.*

"For use of steamer Keor Jeor during month of January, 1863, taels 3,000.

"E. & O. E.

"SHANGHAI, *February* 1, 1863."

Also "B," a bill for the use of the Keor Jeor from the 1st of October to 31st December, 1862, three months, at taels 3,000, total taels 9,000, with the words written on it "Approved, H. A. Burgevine," as follows:

"*Imperial Chinese Government to C. E. Hill, Dr.*

"To use of steamer Keor Jeor from October 1st, 1862, to December 31st, 3 mos., @ tls. 3,000 per mo.=tls. 9,000.

"SHANGHAI, *January* 1, 1863."

Also a paper marked "C," being a memorandum of the United States consul-general dated July 11, 1873, as follows:

"Concerning the Keor Jeor matter I am of the opnion that the government should pay a fair charter. I am not authorized by Mr. Hill to say that he consents to a reduction of his claim, yet I think it impossible to require of the Chinese more than a fair charter. All circumstances considered, I think that they cannot be legally required to pay anything. Yet as the vessel was used and was of service and actual economy, I should, as an arbitrator, decide that something fair and reasonable should be allowed.

"I have talked the whole matter over with the Taotai, but he is strenuous in refusing anything.

"SHANGHAI, *July* 11, 1863."

Also a paper marked "D," an affidavit of C. E. Hill, dated June 19, 1863; as follows:

"CONSULATE OF THE UNITED STATES,
"*Shanghai, June* 19, 1863.

"Charles E. Hill, an American citizen, resident of Shanghai, being duly sworn, deposeth:

"I made a contract with General Burgevine in September last, by which General Burgevine, as agent of the Chinese Government, was to take the steamer Keor Jeor,

and pay me tls. 12,000. Papers of transfer were made out, and not delivered, because I did not get the money. The original understanding was that if the purchase money was not paid by 1st January, 1863, the vessel was to receive charter-money at taels 3,000 per month, and all bills paid. I now render an account for the charter-money, and Messrs. Thomas Hunt & Co. render an account for articles supplied and alterations. The alterations were made by order of General Burgevine. The charter-money is for three months at tls. 3,000=tls. 9,000, and one month under General Holland, same rate, making tls. 12,000.

"General Burgevine approved the first account, and General Holland wrote me a letter stating that during January the vessel was in the Chinese service, that she was under his orders, and that she was the most useful vessel he had.

"C. E. HILL.

"Before me.

"GEO. F. SEWARD,
"*U. S. Consul.*"

Also a paper marked "E," snbmission to second arbitrators, Messrs. Cunningham and Hanbury, in form of a letter by the United States consul, dated October 13, 1863, as follows:

"UNITED STATES CONSULATE,
"*Shanghai, October* 13, 1863.

"SIR: I send you clearly written out the terms of the arbitration determined upon by us yesterday. If satisfactory please affix your official seal as I have already done, and return it to me. It is written in duplicate.

"The arbitrators shall be, if they will consent to act, Edward Cunningham and Thomas Hanbury, esquires. In case they disagree upon any one or more of the claims, they shall call in a third party of their own choosing, whose decision shall be final. But if both agree then the Taotai or consul, as the case may be, shall abide their decision.

"The matters which it shall be competent for them to examine and pass upon shall be the various claims against the Chinese Government or Taotai Woo on account of the Ward corps, the Ward estate, and the Keor Jeor steamer, and the account of E. J. Benson, quartermaster-general.

"The object in view in this arbitration is the closing up of the whole business named, and it is therefore expressly agreed that what the arbitrators say shall be final, and shall be binding on either party. The claims which may be declared just by them shall be paid by the Taotai within fifteen days from the time that the decision is made. Those claims which are declared not just or unsupported shall be dropped by the consul, and never brought forward again. The accounts of Benson shall be looked into by the commission, and in case a deficit should be found, or a wrong use of moneys shown, the consul shall use his utmost endeavors to force a return of the amounts thus in deficit or wrongfully used.

"The arbitrators shall receive from the Taotai 1 per cent., and from the consul 1 per cent. upon all claims established against the government or Taotai Woo as a consideration for their services.

"The arbitrators shall make their decision within forty-five days from the date hereof.

"I will address you again so soon as I have had an opportunity to ascertain whether the gentlemen above named will consent to act in the desired capacity.

"I have the honor to be, sir, your obedient servant,

"GEORGE F. SEWARD,
"*United States Consul.*

"To His Excellency WOO,
"*Taotai, late Intendent of Circuit.*"

Also, F, reply by Woo, Taotai, to the preceding, dated October 18, 1863, assenting to proposal contained in document E.

Also, G, the report of the second arbitrators, dated 18th January, 1864.

Also, H, a list of disallowed claims, showing rejection of Mr. Hill's claim for taels 12,000.

Documents A, F, G, and H are sufficiently summarized above, and are omitted by consent.

In regard to C, Mr. Seward stated that it was prepared after he had taken Mr. Hill's affidavit D, and contained his opinion upon the case in view of that affidavit. He was not then aware that Mr. Hill had made a written charter of the Keor Jeor to Ta Kee.

Previous to the filing of this suit no proceedings had been taken against Ta Kee through Mr. Seward.

Upon the whole evidence, including the documents just put in, Mr. Drummond asked the Taotai to dismiss the case.

The Taotai said that the evidence ought to go on until they knew all that both sides had to say.

Dr. R. A. JAMIESON, examined by Mr. Cowie, deposed:

I am a physician and surgeon practicing in Shanghai. I was in Shanghai in the years 1862 and 1863. I remember the rebels were then in this neighborhood. I remember the force called Ward's force. It was organized for the purpose of driving the rebels out of the province. I saw Ta Kee once only. I cannot say positively what was his connection with the force. I believe he was paymaster of the force. It was notorious at the time that he was so acting. I remember that Woo was Taotai during the early part of the time. I only know it by hearsay, and not by my own knowledge. I have always understood that the management of the force was in Woo's hands, but that Ta Kee had the payment of it. I remember some foreign steamers were used in connection with the force, and that the Keor Jeor was one of them. I do not know that she was chartered by the government. I know she was used in connection with the operations of the force. I do not believe that Ta Kee held any official rank. I remember the capture of the Keor Jeor. I was on board her a few minutes before she was captured. She was captured by a party headed by Burgevine and a man named, I think, Jones. I had no reason to believe that if she had been lost, it would have been a loss to Ta Kee. When she was blown up it was regarded as a loss the government would have to bear—that was my impression.

By Mr. Eames:

I have only stated common report, nothing of my own knowledge. I did not actually see her captured, but saw her five minutes afterward, going down the creek, and also saw Burgevine on board. It was on the 1st or 2d of August, 1863—on a Sunday.

FOO-E CHOW, cautioned, deposed:

I am agent and rent-collector of the late Ta Kee's estate, and have been employed by Ta Kee's family for twenty-seven years. Fourteen years ago, when the rebels were threatening Shanghai, Yang Ta Kee was head of the establishment. Woo was then Taotai of Shanghai. Ta Kee was at that time acting as manager of Woo's outside business with foreigners, leasing steamers and things of that sort, Woo not being able to speak English. Ta Kee was not the agent of the Taotai, who used him only as a means of intercourse with foreigners. When steamers were used for the suppression of the rebellion, along with the "Ever-Victorious Army," Woo, Taotai, was the master, and Ta Kee only his mouth-piece. The steamers were chartered, and the Taotai signed the charter-parties. I have never seen Woo Taotai affix his stamp to any charter. Ta Kee had no official seal, he used his own in all private business transactions, but not in chartering steamers. Ta Kee did not sign charter-parties. I remember all of the steamers' names, but know nothing about the Keor Jeor. I do not remember that steamer. I do not remember taking any part in the transactions about the steamers, but used to hear Ta Kee talking about them as to which were good and which were bad. I knew Ward and Burgevine, and that they had no authority to lease a steamer unless the Taotai gave the order to do so. After the suppression of the rebellion, all Ta Kee's small straggling books and papers in connection with the force were sent into the city for settlement by Woo. The larger accounts were settled by Ta Kee, the money being handed over by Woo to him for that purpose. Ta Kee died at Shanghai in the fourth year of the present reign—about 1865. Woo Taotai died in the eleventh year of the present reign—in 1873.

(By Mr. Eames.)—I am 48 years old, and have been for 27 years in Ta Kee's service in Shanghai. I was at first godown-keeper, next had charge of accounts, receiving and paying money. Was never bookkeeper. I used to go out sometimes, but was with Ta Kee every day, and think I should have known if he had ever signed charter-parties. I was not shroff, nor compradore, nor bookkeeper. I was a sort of manager; no particular name. I had charge of silk and other goods as they came in or went out. I was not a general manager; there were three or four above me. When the Taotai came to visit Ta Kee, I used to hear their conversation. There was a special man to attend about the steamers; I had nothing to do with it. The Taotai bought the Hyson, through Ta Kee, for a despatch-boat. The Taotai came to Ta Kee, and said he wanted the Hyson purchased. I do not know the plaintiff; I have never seen him before.

(By the TAOTAI.)—I never heard of any charter of the Keor Jeor nor ever knew anything of her.

(By the CONSUL-GENERAL.)—Ta kee had no steamers of his own. I do not remember the Martin White. The Tawah was owned by General Ward and Ta Kee together.

LEE-WEI-SAN, examined by Mr. Cowie, deposed:

I belong to Ningpo, and am manager to the pawnbroker outside the North Gate, Shanghai. At the time of the rebellion I was bookkeeper with Ta Kee. There were others above me. I was in the counting-room. The "Ever Victorious Army" was

inaugurated by Woo Taotai, and Ta Kee did business for it. There were several foreign steamers in connection with the force. They were chartered by the Taotai. Ta Kee never chartered any. I remember the names of some of the steamers, but not all of them. I do not remember the Keor Jeor. Ta Kee used to often ask me about the chartering of steamers, but I do not remember his asking about the Keor Jeor. Ta Kee never used any official stamp; he had his own proper stamp, which was affixed to any important documents in which he was concerned. It had four characters. That stamp was always in my charge. It was impossible for one man always to be present. There were three or four others who could use the stamp, but I was generally present. Ta Kee was a business man, and if he did not know of anything done at the time, he knew afterward. I do not know the plaintiff. Ta Kee never spoke to me about this claim. After Ta Kee's death, parties came to see his widow about the steamer. She did not pay them, because she said the obligation never existed.

(By Mr. Eames.)—I never saw Woo stamp any charter-parties. I should not know Woo's stamp if I saw it. I have been stating not what I know of my own knowledge, but what should be in all business transactions. Ta Kee partly owned the Tawah and Martin White in conjunction with General Ward. That was in 1861 or 1862. The Hyson was purchased by the Taotai. Ta Kee had nothing to do with it. I do not remember who chartered the Firefly. The two bills of Tls. 5,000 each on account of the Tawah and of the force, paid to Mr. Hill, I have no recollection of paying myself. I remember Dr. Yates coming to collect this claim. That was in the fifth or sixth year of the present reign.

(By the TAOTAI.) Previous to the death of Ta Kee I never heard of a claim on account of the Keor Jeor, nor that she was chartered. I never knew that she was used with the "Ever Victorious Army."

(By the CONSUL-GENERAL.) I never heard any conversation as to the charter-party of the Keor Jeor between Ta Kee and Ward. No one came about this claim immediately after the death of Ta Kee. The Tawah was used to some extent. I do not know whether the claim on account of the Martin White was paid. There was no charter-party for the Martin White and Tawah. I do not remember that I ever opened a book of Ta Kee's and showed Dr. Yates an entry of Tls. 8,500 for the sale of the Keor Jeor to Ta Kee by Mr. Hill. I never heard of any such sale.

This closed the defendant's case.

Mr. Eames submitted two affidavits as to the loss of the charter-party for the Keor Jeor. He said he believed they were admissible in any courts of justice. They were the affidavits of Messrs. Lewis and Rodgers.

Mr. Drummond objected to their being put in, unless the witnesses could be called for cross-examination.

Mr. Eames would not press the matter, but it was customary in courts of admiralty, or where loss of life occurred by fire, or in any case of loss of or destruction of documents, to receive affidavits as evidence; and he could not understand why the rule could not be extended to a case like this.

It was called to Mr. Eames's recollection that the Taotai, at an earlier part of the case, had expressed his unwillingness to receive the affidavits.

It was arranged that arguments of counsel on both sides should be submitted in writing, in English and Chinese, on Monday, the 1st proximo.

The court then rose.

Argument of counsel.

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ARGUMENT FOR PLAINTIEF.

In pursuance of the arrangement, made at the preliminary hearing of the above-named cause, I, as counsel for the plaintiff, now beg leave to submit a few remarks upon the pleadings and evidence in the case.

First as to the pleadings.

The petition was drawn by the plaintiff without the assistance of counsel, and may be inartistic, but it clearly and fully states all the facts and circumstances on which the plaintiff bases his claim. The answer, on the other hand, drawn by counsel, seems to have been framed with a view to keep the plaintiff entirely in the dark as to the real grounds of defense. The answer, beyond a general statement of inability to answer, and a general denial of the charter of the Keor Jeor, contains little or nothing except argument and certain statements that the plaintiff recognized Ta Kee as the agent of the Taotai, Woo, which statements are not true. It will easily be seen which of the parties has shown the greatest readiness to afford every means of arriving at the truth.

Second, as to the evidence.

The plaintiff swears that he chartered the Keor Jeor to Ta Kee, for the use of the Soong Kong Force; and he and Mr. Jenkins swear that the terms of the charter were taels 3,000 per month for the use of the steamer for four months certain, with the privilege of using her at the same rate for such further time as she might be required; and in case of her loss, Ta Kee was to pay to the plaintiff, as indemnity for such loss, the further sum of taels 12,000. Colonel Forester also swears that the rate of the charter was taels 3,000 or $3,000 per month, and he thought it was taels 3,000. The fact that she was chartered in pursuance of the advice of General Ward, and was used by and in connection with the Soong Kong Force, is, I submit, amply proved by the testimony of the witnesses already named, and by Colonel Forester, Mr. Rouse, Mr. Ashley, and Mr. Rhode. As to the non-production of the charter-party, the plaintiff and Mr. Jenkins swear that the document was delivered to the first arbitrators, Rodgers and Jenkins, which statement would have been confirmed by the affidavits of the said Rodgers and B. R. Lewis, then a clerk in the United States consulate-general; and those affidavits would also have shown that the charter-party was deposited in the United States consulate-general. The plaintiff swears that since he delivered the said document to the arbitrators he has never seen it; and the former existence and subsequent loss of the document are sufficiently proved. That the steamer was used by the Soong Kong Force for about the time stated in the petition, namely, from early in June, 1862, until her capture on the 1st or 2d of August, 1863, has been proved by the plaintiff and the witnesses produced by him.

The capture of the steamer as well as her use by the Force is stated by Dr. Jamieson, the only reliable witness produced by the defense, and there is no pretense that she has ever been returned to the plaintiff. If, as stated by Mr. Howgate, she was retaken and repaired, the plaintiff's claim should be increased.

If I am right in assuming that the charter, use, and loss of the Keor Jeor and the failure to return her to the plaintiff are proved beyond question, then it only remains to be settled who is responsible for the use and loss of her. The steamer was certainly used in the interest of the Chinese Government, that is, in suppressing a rebellion against that government. The contract for the use of her was made by Ta Kee, and either he or the Chinese Government or both must be responsible. Even if Ta Kee was merely an agent of the government, and there is no conclusive evidence of this, he may yet have made himself personally liable; for according to foreign law, and I understand that the Chinese law agrees with it, if an agent sees fit to enter into a contract in his own name he is personally responsible.

It seems to me unnecessary to inquire whether the terms of the charter were reasonable or unreasonable. There is no pretense of any fraud or concealment by the plaintiff, and, in a foreign court, the contract would be conclusive; but as it may be otherwise in a Chinese court, I submit that there is no ground for saying that the terms of the charter were exorbitant. The evidence of Mr. Miller, Mr. Westall, and Mr. Cunningham shows that the Keor Jeor was not only a very economical and extremely useful steamer, but that even for commercial purposes the use of her was worth the price claimed, and the testimony of the plaintiff, Colonel Forester, Captain Rouse, Mr. Ashley, and Mr. Rhode shows that she was absolutely necessary to the Soong Kong Force, and that there was no other steamer here at the time of her charter which could have done what she did; and, under such circumstances, any price would have been reasonable. Besides, I beg to remind the court that in 1862 and 1863 everything was very dear, and the rate of interest was very high at Shanghai. Rents were in many cases five times what they are now, and materials and labor cost then much more than they do at present. The plaintiff has sworn that in order to effect the charter he consented to the insertion in the charter of the sum of taels 12,000 as indemnity for her loss, but she actually cost him about twice that amount; so that if she had been lost immediately after the charter was made, he would have been a loser.

I submit, in conclusion, that it is proved that the Keor Jeor was chartered for and used by the Soon Kong Force; that the business of chartering was done by Ta Kee, who was manager at the time of the said Force, and who, as Mr. Jenkins, who represented him in the first arbitration, deposes, never denied his liability; that the steamer was very useful, if not indispensable, to the Force; and that, as there is no pretense that the amount due for her use and indemnity for her loss has ever been paid, the amount is still due to the plaintiff, and should be paid with interest by either Ta Kee or the Chinese government.

I further submit that the evidence shows that the Soong Kong Force acted, until long after the charter of the Keor Jeor, quite independently of the general imperial troops; and that it was originated and managed by Ta Kee, which his negotiations for the purchase of the steamer seem to confirm.

Further, that even if Ta Kee was not originally responsible, he did by his promise to pay the plaintiff "all," in order to induce him to release the steamer when she was

seized by him as testified by him and Mr. Sherman, become responsible as on an original contract, and his, Ta Kee's, representatives should be held liable to pay the plaintiff's claim with interest.

I have not thought it necessary to discuss at length the defense. The failure to produce the charter-party has, I submit, been sufficiently accounted for, even without the affidavits which the court has rejected. There can be little doubt that it was abstracted from the safe of the consul-general.

The evidence for the defense I shall also dispose of very shortly. Dr. Jamieson's evidence, so far as it was evidence and not mere hearsay, was entirely in accordance with the plaintiff's statement.

The statements of the two Chinese witnesses, Foo E-Chow and Lee Wei-San, are utterly unworthy of belief. The first-named seems to have been little, if anything, better than a cooly, and the second admits that he was third or fourth in order as accountant, and that Ta Kee explained all his affairs to them seems incredible. Besides, they swear that they were particularly familiar with the affairs of Ta Kee and the engagement of steamers for the Soong Kong Force, and that they never heard, until comparatively lately, of the Keor Jeor. I submit that one or the other of these statements is manifestly false. Moreover, Lee Wei-San testified that the Taotai, Woo, chartered or bought all the steamers for the Soong Kong Force, but on cross-examination he admitted that he had nothing to do with the Taotai, and Mr. Cunningham swore that he sold the steamer Hyson to Ta Kee.

It would seem that the counsel for the defense intend to rely upon the fact that in a former arbitration (spoken of in this case as the first arbitration) the plaintiff presented a claim for taels 12,000 only. I can add little or nothing to the sworn statement of the plaintiff on this head. He has sufficiently explained this matter, and that it was in the interest and at the request of Ta Kee. The affidavit in support of the claim was hastily drawn and, as shown by the handwriting, not drawn by the plaintiff himself, and (I think I am justified in saying it) was not carefully considered; and I submit that it ought not to override his deliberate statements, and the evidence given in this case. On the contrary, it seems to me that the presentation of this claim for taels 12,000 is entirely in accordance with, and confirms the statement now made by the plaintiff. At all events, the plaintiff considered Burgevine as the agent of Ta Kee, as Ward was before him, and a contract with him the same as with Ta Kee.

As to the two arbitrations also, namely, those which have been mentioned in this case as the first and second, I have little to say. Neither of them has been carried out by the Chinese parties to them, and of course they cannot refuse to abide by the awards and at the same time insist that the other parties shall abide by them. Besides, I respectfully submit that the second arbitration, at least so far as the claims submitted to the first one are concerned, was a nullity. No legal objection was made to the first award, and the claimants were not asked to consent to the second arbitration; and it clearly appears by the testimony of Mr. Cunningham that the present plaintiff never appeared, or was asked to appear, before the arbitrators in the last arbitration.

The charter-party must have been before the first arbitrators, as sworn to, or they would not have approved of the plaintiff's claim as they did; and there is good reason to believe that the charter party had been abstracted prior to the sitting of the second arbitration.

I understand that this court does not proceed according to any technical rules; that its object is to arrive at the truth and justice, and to act and decide accordingly; and, if I am right, I am very confident that the court will decide that the plaintiff must be paid the amount claimed by him, with interest, and that Ta Kee's representatives must pay him.

That the plaintiff's steamer was very serviceable in suppressing the rebellion cannot be doubted; that the amount claimed by him for her use and loss seems to me to have been proved to be just; and if such is the case, it is obvious that the plaintiff has been subjected to great hardship by being so long kept out of his money.

All of which is respectfully submitted.

I. B. EAMES,
Counsel for Plaintiff.

Argument for defendant.

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The plaintiff has utterly failed to prove any case against the defendant, and his claim should be dismissed on the following grounds:

1. That the doctrine of law *transit in rem judicatam* applies, the claim having been submitted to the arbitration of Messrs. Cunningham and Hanbury and by them disallowed.

2. That it is wholly barred by lapse of time, in law and in equity. The maxim *vigilantibus non dormientibus jura subveniunt*—"the laws assist those who are vigilant, not

those who sleep over their rights"—as applied by the highest legal authorities, English and American, is decisive on this point.

3. That it is wholly unsupported by evidence, or satisfactory proof of any kind.

In support of the first ground it has been proved—

(1) That the plaintiff placed his claim in the hands of his own consul, Mr. Seward; that Mr. Seward arranged an arbitration with the Chinese authorities before Messrs. Jenkins and Rodgers, and the plaintiff succeeded in inducing them to allow it. See A, dated 3d March, 1863.

(2) That this arbitration was unsatisfactory, and was set aside by mutual agreement between Mr. Seward and the Taotai, Woo (Mr. Seward's evidence).

(3) That a fresh arbitration was agreed to between Mr. Seward and the Taotai before Messrs. Cunningham and Hanbury, when the former undertook "never again" to bring forward any claims which these arbitrators disallowed, and the Taotai agreed to the arbitration on that undertaking. See E and F, October, 1863.

(4) That the plaintiff assented to these arrangements and furnished evidence by filing an affidavit before Mr. Seward, "D," June 19, 1863.

(5) That these arbitrators wholly rejected Mr. Hill's claim (G and H) 18th January, 1864, and this abitration has never been set aside or impeached.

(6) That the claim of taels 12,000 thus rejected was for the same steamer and during part of the same period for which payment is now claimed.

The arguments in support of the second ground are:

(1) That the plaintiff's claim is for charter-money from June 1, 1862, to August 1, 1863, fourteen consecutive months, at tls. 3,000 a month, tls. 42,000; indemnity for loss, tls. 12,000, and interest.

(2) That his petition is dated 29th December, 1873.

(3) That his claim is, therefore, upward of eleven years old.

(4) That Ta Kee, Woo Taotai, Burgevine, and Ward have all died during this period.

(5) That the plaintiff's evidence discloses the fact that he was aware of his claim throughout this period; that he was during a great part of the time in China; that he employed Dr. Yates as his agent to press his claim; that no petition has been filed previously.

(6) That no evidence has been given by Dr. Yates (though he was present throughout the case) explaining his action or inaction in the matter.

(7) That by English and American law a lapse of six years without a suit being brought is sufficient to bar this claim.

The authorities in support of this ground are: Bell *vs.* Morrison, 1 Peters' (U. S.) R., 360, in which Mr. Justice Story observed: "It has often been matter of regret in modern times that in the construction of the statute of limitations (21 Jac., 1, c. 16) the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the statute; that instead of being viewed in an unfavorable light as an unjust and discreditable defense, it had not received such support as would have made it what it was intended to be, emphatically a statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction may have been forgotten, or be incapable of explanation by reason of the death or removal of witnesses."

Also the following: "Where the demand is strictly of a legal nature, or might be cognizable at law, courts of equity govern themselves by the same limitations as to entertaining such suits as are prescribed by the statute of limitations in regard to suits in courts of common law in matters of account. If, therefore, the ordinary limitation of such suits at law be six years, courts of equity will follow the same period of limitation. But where the demand is not of a legal nature, but is purely equitable; or where the bar of the statute is inapplicable, courts of equity have another rule, founded sometimes upon the analogies of the law, where such analogy exists, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence in matters of account, although not barred with the statute of limitations, courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *Vigilantibus, non dormientibus, jura subveniunt.* It is here said a court of equity will not allow a dormant claim to be set up when the means of resisting it, if unfounded, have perished; much less cast upon the defendant the burden of proving an affirmative when the witnesses that might have proved the fact are all dead."

And it is here said that waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and, being so, neglects to enforce them.

In support of the third ground the arguments are:

(1) That the only evidence as to the existence of a charter-party are the statements of the plaintiff himself and Jenkins.

(2) That Jenkins' evidence is vague and uncertain, and discredited by the fact that though he, as one of the first arbitrators, allowed the full claim then made by the plaintiff, yet his arbitration was admittedly so unsatisfactory that the consul agreed to set it aside entirely, that the second arbitrators placed no reliance upon it, and finally rejected entirely what he had allowed in full.

(3) That the plaintiff's sworn evidence in this suit is flatly contradicted by his own affidavit, D, of eleven years earlier date. He now says he dealt with Ta Kée alone, and looked only to him throughout, and that Ta Kee and Ward signed the charter-party, and that Burgevine never renewed it, and he now claims only against the private estate of Ta Kee, and not against the Chinese Government; whereas in June, 1863, he made an affidavit, in which neither Ta Kee nor Ward are mentioned, stating that he made a contract with Burgevine, as agent of the Chinese Government, for the sale or charter of the same steamer, and sent in two bills headed, "Imperial Chinese Government to C. E. Hill, Dr.," claiming charter-money at 3,000 taels per month for the months of November and December, 1862, and January, 1863, being part of the very same time now claimed for against Ta Kee. His only explanation amounts to saying that he did so because Ta Kee asked him to do so. If that affidavit was untrue, no matter who asked him to make it, it renders all his evidence untrustworthy; if it was true, then his evidence in this suit on the main point must be untrue.

The maxim *allegans contraria non est audiendus* (he is not to be heard who alleges things contrary to each other) is applicable here. In the case of Wood *v.* Dwarris, 11 Exch., 493, Lord Kenyon observed: "A man shall not be permitted to blow hot and cold with reference to the same transaction, or insist at different times on the truth of each of two conflicting allegations according to the promptings of his private interest." If it be said that there is room for any doubt as to the meaning of the affidavit D, then the rule *verba chartarum fortius accipiuntur contra proferentem* (the words of an instrument shall be taken most strongly against the party employing them) must be applied; but it is submitted that there is no room for any such doubt.

Mr. Seward's memorandum, C, makes it almost certain that the plaintiff dealt with Burgevine only in regard to this steamer, and that Burgevine had no sufficient authority to bind the Chinese Government. It is not denied that there was such a steamer as the Keor Jeor and that she was used in connection with the force employed for suppressing the rebellion; but the whole of the evidence shows that she was used solely for Government purposes, which gives no ground whatever for a claim on Ta Kee's private estate. If a claim could have been substantiated, it would have been against the Chinese Government, and that claim was made and disallowed by the arbitrators eleven years ago.

Ta Kee is proved to have been merely an agent or officer of the Chinese Government in these matters, and a suit against the personal representatives of an agent or officer of the government in such a case as this could not be sustained for a moment either in England or America.

With regard to the charter-party, bill of sale, and memorandum in English and Chinese, it is stated by the plaintiff that they were handed to the first arbitrators and were deposited by Mr. Lewis, a clerk in the shipping office of the United States consulate, in his safe, and are now lost. There is no evidence to show how they could have been lost, or any explanation why evidence has not been obtained from Mr. Lewis. Other documents connected with the first arbitration are now in evidence. They were clearly not produced before Messrs. Cunningham and Hanbury in 1863 (only a few months later), though efforts to get all evidence in support of this claim were then made. The affidavit D mentions no charter-party, and speaks of the "original understanding." The statements as to the signing and sealing by Ta Kee and Ward (both of whom are dead) are unsupported and are denied by the Chinese witnesses, and the necessary inference from all this is that no such document ever existed.

Nothing but the strongest evidence could make this claim worth a moment's consideration, and there being no charter-party or proof of contract the case should be dismissed.

It is suggested that the following is probably a correct solution of the facts in question, but it is immaterial to the defendant's case.

Hill (the plaintiff) made a verbal agreement with Burgevine (see C and D) for the sale or hire of his steamer Keor Jeor, not knowing whether Burgevine was authorized to make such an agreement or not and taking his chance of getting payment. Burgevine used the steamer for a short time in the imperial service without his agreement ever being ratified by the Chinese authorities, and on leaving the imperialists and joining the rebels enabled the latter to seize it. (See Dr. Jamieson's evidence.) The rebels kept it for a considerable time, and finally the imperial troops retook it when they conquered the rebels, and the Chinese authorities considered it simply as a prize. As Burgevine was dead, and the rebels conquered, the only chance left for Hill was to try

to get something from the Chinese Government. He made this effort at the arbitration and failed, and now, ten years later, is making a fresh effort against the heirs of Ta Kee.

It is quite possible that Hill was paid part if not all he was entitled to from Burgevine; but, if not, and if the foregoing suggestions are correct, he is merely a victim of misplaced confidence in Burgevine and a sufferer from his own want of prudence in parting with his steamer without any security whatever.

W. V. DRUMMOND,
Counsel for the Defendant.
GEO. J. W. COWIE,
Counsel for the Defendant.

Reply to the argument for defendant.

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I have very few remarks to make in reply to the argument for the defense, as I have already, in my argument for the plaintiff, replied in advance to the greater portion of those arguments; but I feel that I ought to notice a portion of them.

First. I am not aware that in Chinese law and practice, and I understand this to be a Chinese court, there is anything analogous to the English and American statute of limitation, and it has seemed to me idle, to say the least, to cite foreign authorities or foreign law. In a foreign court foreign law would be administered, and I presume that Chinese courts apply their own law. The delay in the prosecution of this claim has been, I submit, sufficiently accounted for. The plaintiff for a long time hoped to settle the case without bringing it into court.

Second. I have already spoken of the two arbitrations mentioned in this case as the first and second, and have nothing to add except this: that if the defense mean by their statement that the "plaintiff assented to these arrangements," that he assented to the second arbitration, that allegation is untrue as shown by the evidence of the plaintiff and also by that of Mr. Cunningham, one of the second arbitrators.

Third. As to my omission to put Dr. Yates on the stand, I have nothing to say, the court being fully aware of the reason of that omission. Of course the court can, at any time, ask such questions of Dr. Yates as the justice of the case may require.

Fourth. As to the remarks upon Mr. Jenkins's testimony, it ought to be sufficient to say that he was not impeached or discredited; but, in addition, I beg to call the attention of the court to the fact that he was selected by Woo, Taotai, and he saw Ta Kee "almost every night" during the first arbitration. Moreover, Mr. Jenkins's business being, to a great extent, with the Chinese, it is incredible that he would warp the truth to injure Chinese.

Fifth. As to the plaintiff's affidavit marked D, I have nothing to add to my first argument. The explanation of that has been already clearly made.

Sixth. The suggestion by the defense that a witness is not to be believed who testifies inconsistently, has, as far as the plaintiff's testimony is concerned, already been replied to; but it might, perhaps, be borne in mind, when the testimony of Foo E-Chow and Lee Wei-San is under discussion, especially as they state that they were very familiar with the doings of Ta Kee and the employment of steamers by the Soong Kong force, and that they never heard of the steamer Keor Jeor; yet the defendants admit in their argument that she was employed by that force.

Seventh. The existence of the Keor Jeor and her use by the Soong Kong force, though denied by the answer, is admitted in the argument. Ta Kee's agency for the Chinese Government has not been proved; and the evidence for the defense, if it proved anything, proved that he had no official seal, which would seem to negative the idea that he was an official.

Eighth. It is said that there is no proof of the loss of the charter-party. The plaintiff has sworn that he never saw it after he delivered it to the first arbitrators; and the affidavit of Mr. Lewis, which I respectfully submit was improperly rejected, would have made this matter perfectly clear.

Ninth. I will not take up the time of the court by any reply to the somewhat extraordinary explanation of the plaintiff's position, suggested near the close of the argument for the defense, but I feel bound to say that not the slightest evidence of the total or partial payment of the plaintiff's claim was adduced.

All of which is respectfully submitted.

I. B. EAMES,
Counsel for Plaintiff.

Reply to the argument for the plaintiff.

In reply to the argument of the plaintiff's counsel, Mr. Eames, in support of his case, it is only necessary to say:

That the references to what would have been proved by affidavits which are rejected

by the court, are not in evidence at all, are wholly improper, and should be omitted from consideration.

That Mr. Eames's attempt to give evidence himself, saying "Besides, I beg to remind the court," *et cetera*, is also improper.

That the greater part of the argument is devoted to showing that there was such a steamer as the Keor Jeor, belonging to Mr. Hill, and that she was used in connection with the Chinese forces, and that the amount of charter-money claimed is not exorbitant.

The argument has already admitted the first and second of these allegations, and the defendant has never, throughout the case, referred to the third allegation, or made the question of amount of charter-money any ground of defense.

The rest of the argument for the plaintiff has been fully answered by anticipation in the argument for the defendant, already submitted.

W. V. DRUMMOND,
Counsel for the Defendant.
GEO. J. W. COWIE,
Counsel for the Defendant.

[Inclosure 2 in No. 108.]

MEMORANDA OF FOUR CONVERSATIONS BETWEEN THE UNITED STATES CONSUL-GENERAL AND THE TAOTAI; AND THE TAOTAI'S JUDGMENT IN THE CASE HILL *vs.* TA KEE.

Memorandum of a conversation between Mr. Seward, United States consul-general, and Feng, Taotai, upon their meeting to decide the case of Hill vs. *Ta Kee.*

SHANGHAI, *June* 26, 1875.

The Taotai mentioned the award of Messrs. Cunningham and Hanbury, arbitrators, and said that he did not see how the claim of Hill could be brought forward again.

The Consul-General said: But four months' charter out of fourteen was put before the arbitrators. The arbitrators had to decide upon the claim as presented against the government. It is now presented against Takee. Only a small part of the claim went to the arbitrators, and that part by a mistake. But granting that this claim was submitted to arbitration, the award is not binding on Hill, because Woo has not observed it. Woo could not claim the benefit of an award the obligations of which he has rejected.

The Taotai said: Woo did right; he ought not to pay more than he considered just.

The Consul-General said: Woo should have followed out the award of the arbitrators. It could not be tolerated that a party to an arbitration should throw overboard the obligation imposed by the award, taking the benefits.

The Taotai asked for document E.

The CONSUL-GENERAL. I will get it and show it to you. But I must point out again that we are dealing with a claim against Takee, not Woo, and that reference to document E is not necessary.

The TAOTAI. Did Hill put his claim before the second arbitrators?

The CONSUL-GENERAL. He did not. I put a part of it before them. He, at Takee's request, had put a part of his claim before the first arbitrators. These papers were in my hands, and by me put before the second arbitrators without any knowledge that Hill had a further claim, and without an exact understanding of the business. I thought that I understood the matter, but I now find I did not. There were a very large number of claims, amounting to half a million of dollars.

You, the Taotai, know that this steamer was used. I know it. I was here and you were here, and we saw it. The magistrate Chen (who was present at the interview) knows it. She was used for fourteen months. The government had the benefit. She was used in the public service. But Takee is first responsible because he made the contract. But if Hill cannot recover from Takee he will pursue the government. The old award does not bind Mr. Hill, because the award has not been observed by Woo.

The TAOTAI. We admit that the steamer was used, but we do not know but that Takee paid for the steamer. The time is very distant, people are dead or absent, and proofs not easy to get.

The CONSUL-GENERAL. The defense has been that Takee was not responsible. It has not heretofore been suggested that he has paid something on account or in full. If he did, his books will show it. He was a business man. Hill's receipt also would be forthcoming. Hill swears that he has not had anything on account.

The TAOTAI. Takee is dead. His books may have been destroyed.

The CONSUL-GENERAL. Down to February, 1864, Takee had paid nothing. Otherwise Woo would have said so to the arbitrators when the Korjeor claim was presented

to them. Woo and Takee were intimate friends. Takee died in 1865. His wife or people would have known of any payment made after his death.

The TAOTAI. He must have a reason for not paying.

The CONSUL-GENERAL. This answer would do if it was the sole instance in human experiences of a debtor failing to pay his just debts. In this very connection you have seen Woo, Taotai, fail to pay what arbitrators have shown to be due from him.

The TAOTAI. Taotai Woo must have had a reason for not paying; besides, why has this business remained open so long?

The CONSUL-GENERAL. It has remained open so long because up to the date of Takee's death he indicated that he would pay. After that the widow was in mourning, and delays occurred; later on Hill was absent, and I was absent myself. All the delays are accounted for in the evidence.

The TAOTAI. Certainly Takee must have had reasons for not paying, and I cannot understand why the claim has not been pressed.

The CONSUL-GENERAL. You will find why the claim was not urgently pressed all set out in the evidence. There is no flaw; why should you have doubts?

The TAOTAI. No one is able to testify to Hill's relations with Takee and whether he was not paid.

The CONSUL-GENERAL. Is it to be supposed that, having this claim constantly brought before them, Takee's people would neglect to preserve all evidence of payments made? Here I have a vast quantity of papers pertaining to claims against Woo and Takee. In these I have no pecuniary interest. Would Woo or Takee fail to preserve their papers less carefully?

The TAOTAI. There is no evidence that money was not paid to Hill.

The CONSUL-GENERAL. There is evidence. Here is Hill's sworn statement. He is a truthful man. The failure of the defense to produce book-entries or receipts is further evidence.

The TAOTAI. There is no evidence of the charter. No evidence of the monthly rate. No evidence that payments have not been made.

The CONSUL-GENERAL. Everything that is in evidence is in this printed book. The case was heard with great care and this is the result. This evidence has been submitted to, and approved as correct by, the lawyers on both sides.

The TAOTAI. The arbitrators (alluding to Messrs. Hanbury and Cunningham) decided that the claim should not be paid.

The CONSUL-GENERAL. Yes, that a part presented to them by me in error should not be paid by Woo. The claim is now brought against Takee's estate.

The TAOTAI. Have you not Woo's letter saying why he did not pay the claim?

The CONSUL-GENERAL. This claim is not now urged against Woo. It is preferred against Takee.

The TAOTAI. Have you no letters of Woo's about it?

The CONSUL-GENERAL. Probably. But he was your predecessor. His letters must be in your office.

The TAOTAI. He left nothing about this matter in the Yâmen.

The CONSUL GENERAL. Well, I will see what letters I have of his; but they can have no concern in this case. You should remember that if Hill's case against Takee be rejected, he will probably claim against the government.

The TAOTAI. I am willing to abide by the decision of the arbitrators and by your opinion stated in the evidence.

The CONSUL-GENERAL. The decision of the arbitrators was on the case as presented against Woo. My memorandum given in the evidence had the same bearing. But I believe that the government having used the steamer, Hill will have a claim against the government if his claim be rejected as against Takee. My memorandum has no legal or binding effect. It was written solely for my own information. It was not in any way a finality; I do not now accept the opinion that I expressed in it.

The TAOTAI. There must have been a reason why Hill was not paid by Takee.

The CONSUL-GENERAL. We have gone over that ground; but I will explain it all again. (Here followed a repetition of what Mr. Seward had before said.)

The Taotai here called attention to Mr. Seward's statement on page 32 of the printed case.

The CONSUL-GENERAL. My remembrance in making that statement eleven years after the occurrence proved to be somewhat defective. I was sure that Hill's full claim had not been submitted. I had forgotten that a part had been submitted. I afterward found on reference to documents that I had made a mistake on this point, and handed in the papers showing what had actually been done.

The TAOTAI. It is very difficult to decide.

The CONSUL-GENERAL. Doubtless you have difficulty. To me the case seems clear, but one needs to understand the evidence thoroughly. Perhaps you have not yet balanced it all in your mind. If I had always cases so easy as this one I should never have any great anxiety in the discharge of my judicial duties.

The TAOTAI. Mr. Hill's lawyer placed his case very thoroughly before the court, but the case of the defense is not clear.

The CONSUL-GENERAL. There were two lawyers for the defense against one for the prosecution. You know of the skill of the defending lawyer. (He had recently employed him.) You may judge by what you see in the evidence and arguments of the real merits of the case.

The TAOTAI. How shall we decide the case? Shall we meet again?

The CONSUL-GENERAL. Yes, we ought to meet daily until we have decided it.

The TAOTAI. Cannot the parties settle it?

The CONSUL-GENERAL. Mr. Hill has been trying for twelve years. There is no hope in that direction.

The TAOTAI. Can you say what your opinion in the matter is? If I agree I will submit it to the parties, and they can decide whether they will pay or appeal to the Tsung li Yamen.

The CONSUL-GENERAL. Cannot you enforce a judgment if you give one?

The TAOTAI. I think not.

The CONSUL-GENERAL. Then we are in the same position as in Woo's arbitration matter. The arbitrators decided, but Woo was not willing to accept the award. So here we sit as a court, and it remains for the defendant to say whether he will abide by the judgment. How am I to understand this?

The TAOTAI. The parties will abide by the judgment, or appeal to higher authorities?

The CONSUL-GENERAL. But the treaty says that you and I are to decide cases between Chinese and Americans. We cannot be simply advisers of the parties. We form a court by decision of which the parties must abide.

The TAOTAI. Shen Taotai should have decided this case. He went away and it developes upon me—it is unpleasant. If I decide against Takee's estate the heir may not pay. If I decide against Hill, you will not be satisfied. Did not Shen write to you before he left that the case was finished?

The CONSUL-GENERAL. No, he did not so write. And if he did it would make no difference. The case was not to be disposed of without consultation. But had we not better now take a couple of days for consideration. You have now more knowledge of the business than when you came to me. If you choose to meet me on Monday, I will be glad to enter upon the business with a view to arrive at a settlement.

The TAOTAI. But there is no charter-party.

The CONSUL-GENERAL. A man and woman live together and have children, would you bother to ask whether they were married according to the rites. The Korjeor was used, as you acknowledge; charter-party or no charter-party, there is an obligation to pay. Who will pay—Takee's estate, or the government?

The TAOTAI. There must have been a reason why Takee did not pay.

The CONSUL-GENERAL. Well perhaps he liked money and did not care to part with it. Will you please take the facts into consideration and see if you can find any other reason.

The TAOTAI. Cannot the parties settle the business? I will advise Takee's people to pay something.

The CONSUL-GENERAL. You might see Takee's people before we meet. There is no use in talking of compromise without a distinct offer from Takee's people.

The TAOTAI. I should dislike to decide the case. It is a great responsibility.

The CONSUL-GENERAL. But we are put here to work. We are agents who cannot shirk responsibility. I decide cases upon the merits and fear only to be wrong. We are only to look to what is just. Your government will approve a right decision. What would it think of a wrong decision?

The TAOTAI. If Mr. Hill will not recede at all, and Takee will not pay all, what is to be done?

The CONSUL-GENERAL. Our business is to decide the case, not to inquire whether one or the other party will recede.

The TAOTAI. I do not know whether Takee can pay so much.

The CONSUL-GENERAL. That is not our business now. We have to decide the question of liability.

The TAOTAI. It is difficult to enforce judgments, when the cases are so difficult. This is a difficult case.

The CONSUL-GENERAL. Shall we meet again Monday or Tuesday?

The TAOTAI. We may meet, but we shall not do anything but talk.

The CONSUL-GENERAL. I am willing to talk so long as any points need elucidation. But if you have decided the case, it will be as well to state your conclusions. There will be no use for farther discussion.

The TAOTAI. I may see Takee and he may say that he does not fear Hill. Let Hill go to Peking. What can I do?

The CONSUL-GENERAL. Well, I will go on Wednesday at 2.30 to see you. We are bound as a part of our official duties to give a decision.

The TAOTAI. Wednesday will do.

Memorandum of a second conversation between Mr. Seward, United States Consul-General, and Feng, Taotai, upon their second meeting to decide the case of Hill vs. Ta Kee.

SHANGHAI, *July* 1, 1875.

CONSUL-GENERAL. Has the Taotai any further light upon the matter?

TAOTAI. I have found correspondence about the subject to Hunbury and Cunningham. Your letter to Woo and Woo's answer; and a letter of Woo's saying that certain parts of the award should be paid and parts not. There are items referring to the "Korjeor." A letter of Hunt & Co. for 895 taels, which were not to be paid; 160 taels for making awnings and sails, also not to be paid, and charter money, $12,000 for four months.

The CONSUL-GENERAL. Were these allowed by the arbitrators?

TAOTAI. No.

CONSUL-GENERAL. Did you find any which the arbitrators thought should be allowed?

TAOTAI. None.

CONSUL-GENERAL. The arbitrators did allow some claims?

TAOTAI. Yes, I find an amount of taels 178$\frac{7}{100}$ for wages of crew, $655 for articles furnished, and also $2,137 for articles used.

CONSUL-GENERAL. Did Woo pay these sums?

TAOTAI. The Taotai paid you, and you, I suppose, paid the claimants.

CONSUL-GENERAL. The fact of such payments being made indicates that the steamer was used.

TAOTAI. Yes.

CONSUL-GENERAL. Have you found that anything was paid on the charter of the steamer?

TAOTAI. I am not Woo or Takee, so I cannot say that nothing was paid.

CONSUL-GENERAL. That you did not find payments would not show that nothing was paid.

TAOTAI. I have only the papers spoken of. If the claim for the four months was not allowable then, it cannot be right now.

CONSUL-GENERAL. Of course you understand that the case before the arbitrators was that of the claim preferred against Woo and not Takee. The arbitrators had nothing to do with that.

TAOTAI. Was Takee then living; if so, why was he not requested to pay?

CONSUL-GENERAL. Before answering this I would call the Taotai's attention to paragraph 6th of the petition. The charter was of the steamer. The charterer was to find the crew, &c., himself.

TAOTAI. Was Hill and Hunt & Co., the same?

CONSUL-GENERAL. The Hong name of Hill and partners was Hunt & Co.

TAOTAI. I take the correspondence of Woo as proof of what was right, and of what took place.

CONSUL-GENERAL. The correspondence refers to the claims for four months. Do you find any record about the other ten months during which the steamer was used?

TAOTAI. No. If used for fourteen months, why did Hill claim for four months only?

CONSUL-GENERAL. The evidence shows why. He put in his claim at Takee's request. If he had received for four months, he could not now bring forward that part of his claim.

TAOTAI. If the parties were here this might be shown. But in their absence I must accept Woo's declarations.

CONSUL-GENERAL. Woo writes about the four months. The steamer was used, as you know, for a long time—actually fourteen months. What do you say about the other ten months?

TAOTAI. Takee must have paid.

CONSUL-GENERAL. If he had paid he would have evidence, receipts, &c.

TAOTAI. I must abide by Woo's record.

CONSUL-GENERAL. It only deals with a part of the claim, and that part against the government.

TAOTAI. Takee was acting for the government in chartering the Korjeor. The record refers only to the four months. The fourteen months must be all trumped up. The trumping up of a claim for fourteen months discredits the whole claim.

CONSUL GENERAL. Do you doubt that the steamer was used for four months?

TAOTAI. I go only by the record.

CONSUL-GENERAL. If you doubt that the steamer was used there is no good in holding further argument. The evidence is clear on this point. Who is responsible may be a question, but the fact of the use of the steamer is proven beyond doubt.

TAOTAI. If used for fourteen months why was not the claim presented to the arbitrators?

CONSUL-GENERAL. The fourteen months were running on when the claim for four months was put in before the first arbitrators. That arbitration met in March or

April, 1863. I put in the four-months claim before the second arbitrators later on by mistake. Had I known of the whole claim I should have presented all probably or none.

TAOTAI. The only way to reach a conclusion in this business is to think a great deal about it.

CONSUL-GENERAL. Are you doing so?

TAOTAI. The only proof is the record left by Woo.

CONSUL-GENERAL. Does not the record left by Woo, which shows a claim for four months and that it was not paid, and the fact, which you know, that the steamer was used a long time, support greatly Mr. Hill's present case as shown in the minutes, &c., of the court before us?

TAOTAI. I have only to look at the record made by Woo.

CONSUL-GENERAL. Woo had never anything to do with the claim as presented against Takee.

TAOTAI. You have many records in your office about it.

CONSUL-GENERAL. I have many papers, and was here at the time of the occurrence. I know of nothing to invalidate Mr. Hill's claim.

TAOTAI. There is no use to talk about the fourteen months until the four months is decided. There is danger that we may get excited and red in the face.

CONSUL-GENERAL. No, we must not do that. We can discuss the case in a quiet, sensible way.

TAOTAI. You know all about this case. You had better give judgment.

CONSUL-GENERAL. I cannot enforce judgment as against a Chinese, as you cannot against an American. It is well for me to aid you in this case, and for you to aid me when Americans are defendants. But it is your part to give the judgment. If you decide as I think right, I will agree with you.

TAOTAI. I know that it is my business to give the judgment. If I give it, I must give it on the Woo record. I cannot take fabricated testimony.

CONSUL-GENERAL. I hope you will not believe that I could knowingly urge a fabricated case upon you.

TAOTAI. What is written is evidence. Woo's record is written. The rest is all oral statement and does not deserve credence.

CONSUL-GENERAL. It cannot be a good thing to leave this business in such shape that there may be doubt of the willingness of the Chinese Government or its officials to do justice to a foreigner who rendered to the government a service. I speak now in view of your statement that Takee in the "Korjeor" matter was acting for the government.

TAOTAI. You said this claim ought not to be paid.

CONSUL-GENERAL. No. The arbitrators decided on a small part which was presented in error. Hill was never before them. They were not dealing with the Takee claim.

TAOTAI. If I am to decide, I must abide by what the arbitrators said.

CONSUL-GENERAL. Are you prepared to say that Mr. Hill has no claim against Takee?

(The Taotai evaded giving an answer on this point for a long time, talking over many points which had already been discussed.)

CONSUL-GENERAL. It will be best for us to make an end of our talk, if there are no points to be elucidated. Do you then decide that there is no claim against Takee?

TAOTAI. Did you at the time know that the steamer was being used for 14 months? (Not waiting for reply.) You and Woo and Takee and Hill were here. The claim was not paid. I find now a record from Woo which relates only to four months.

CONSUL-GENERAL. I knew that the steamer was in the use of the government, which captain she had, and I presume that I knew that she was being used all the while. Would you like any further conversation, or will you give your judgment without more discussion?

TAOTAI. I will see you at your office on Tuesday, the 6th instant, at 2.30 o'clock.

CONSUL-GENERAL. I will await your arrival.

Memorandum of a third conversation between Mr. Seward, United States consul-general, and Feng, Taotai, upon their third meeting to decide the case of Hill versus TaKee.

SHANGHAI, *July* 6, 1875.

The CONSUL-GENERAL. I hope that you are now prepared to give judgment in favor of Mr. Hill.

TAOTAI. Can you tell me what I should do?

CONSUL-GENERAL. You hardly need advice from me.

TAOTAI. What can you suggest?

CONSUL-GENERAL. It is our business to examine the case and give judgment, and not to try to make a compromise. We ought first to inquire whether Takee is responsible.

TAOTAI. Takee is dead now, and the paper of submission to arbitration and the award settled the affair. The arrangement which you made with the Taotai Woo

should be considered to close the whole business. If you do not consider this a settlement, I can write to the viceroy and place the matter before the Tsung li Yâmen. I came to you to seek a settlement by friendly recourse, but not to give judgment upon the case. Takee's people say they have lawyers, and the mixed court magistrate will write to them to urge a friendly settlement.

CONSUL-GENERAL. This case is one for judicial action, and not political negotiation. A suit has been entered and the evidence heard. It remains to give judgment.

TAOTAI. When a judge passes judgment there is an appeal. My decision would be only the judgment of one. I don't understand the case as presented by the defendant. Most of my knowledge of the case I have got from you.

CONSUL-GENERAL. I am quite prepared to admit that an appeal may be taken from you to the supreme government. We are prepared to go before the supreme government to argue the case if your judgment be unsatisfactory. The first business is to hear a case, the next to decide it.

TAOTAI. I do not understand the evidence of the defense.

CONSUL-GENERAL. The record presented to you by me has been approved by the defendant's lawyers, as well as by the plaintiff's lawyers. The case is the same as if parties submitted to you an agreed statement of facts and arguments and asked for judgment.

TAOTAI. Before I could give judgment I should have to hear the case myself.

CONSUL-GENERAL. This is not necessary when you have before you an agreed statement of the case, with arguments, &c. It was a tedious work to hear the case. I do not want to have to go through such a work again. You have no responsibility excepting to decide upon an agreed statement.

TAOTAI. If I had examined the case I could give judgment upon it as presented.

CONSUL-GENERAL. It is not competent for you to object to the record, the defendant by his counsel having approved it.

TAOTAI. The lawyers for the defense have not admitted that the money should be paid.

CONSUL-GENERAL. No. It is your business to decide upon that point.

TAOTAI. I thought at first that something should be paid, but on reading the correspondence between you and the Taotai Woo I have thought that nothing should be paid.

CONSUL-GENERAL. Do you decide the case against Hill?

TAOTAI. I decline to give judgment.

CONSUL-GENERAL. Very well, then, it is useless for us to talk longer.

TAOTAI. The reason why I decline to give judgment is that a claim is made for fourteen months, when a decision has before been given upon four months claimed for.

CONSUL-GENERAL. I do not wish to talk longer, if you have taken up a final position against the petitioner. Please say whether you have finished the case.

TAOTAI. I want to think more about the matter, privately.

CONSUL-GENERAL. What do you mean by privately?

TAOTAI. I want to see the defendant, to learn whether a way of settlement can be arrived at. I would see the defendant out of good will to you, with whom I have long had friendly relations.

CONSUL-GENERAL. Very well. I leave for Japan to-night. I shall return in twenty days. If then you are still unable to give judgment, I can only send the case to Peking.

TAOTAI. I have finally concluded not to give judgment. You may send up the case, saying that in your opinion Takee ought to pay, and that I say that Takee ought not to pay.

CONSUL-GENERAL. Very well.

TAOTAI. I should have been pleased to agree with you.

CONSUL-GENERAL. I very much regret that we cannot agree.

TAOTAI. Can you write out for me the arguments which I ought to use with Takee?

CONSUL-GENERAL. I have no faith that any good would result. Besides, the whole case is in the printed book. Well, then, this is our last conversation on the subject. Having completed the task, with you my work is done, excepting that I have to send the case up.

TAOTAI. It would be more than my head is worth to sign a judgment requiring Takee to pay.

CONSUL-GENERAL. Why do you say this?

TAOTAI. Because the facts would not warrant a judgment.

CONSUL-GENERAL. You have your opinion, I have mine. Higher authorities must now decide.

TAOTAI. If above it is decided that a million is to be paid, I do not care.

NOTE.—The Taotai here repeated again his reliance upon the statement of Woo, Taotai, found in the Taotai's Yâmen by the present incumbent, to the effect that the four months' charter ought not to be paid.

To this the consul-general responded, with a show of warmth, that he must protest against having Woo, Taotai, quoted to him; Woo had agreed with the consul-general to refer certain disputed claims to arbitration; the award of the arbitrators was made and Woo threw a part of the award overboard. Could a man who had done this be quoted to the consul-general as worthy of credence as against all the witnesses quoted by the consul-general?

The Taotai denied the fact, and the consul-general proved it from papers which had been brought by the Taotai.

This fact appeared to sensibly break down the Taotai's confidence in the views which he put forward. And it was finally arranged that he would meet the consul-general for further consultation on the latter's return from Japan.

Memorandum of a fourth conversation between George F. Seward, esq., United States consul-general, and Feng, Taotai, in regard to the case of Hill vs. Ta Kee.

SHANGHAI, *August* 2, 1875.

Carl Kreyer, interpreter. (At the previous interviews Dr. Yates translated.)

The CONSUL-GENERAL. Have you any new light on the subject?

TAOTAI. I regret that I have not been able to change my previously expressed opinion.

CONSUL-GENERAL. I have heard that you have some new evidence. Is this the case? I have no desire to press an unjust claim.

TAOTAI. In the books of account there are entries showing payment for the charter of the Kor Jeor for four months. The payment is put down as made to Geekee. (Thomas Hunt & Co., a firm in which Mr. Hill was partner.)

CONSUL-GENERAL. What books of account are they?

TAOTAI. Not books of account, but books of correspondence of Ying, Taotai. The statement is made by Woo, Toatai, to Ying, Taotai.

CONSUL-GENERAL. Ying was a commissioner to look into claims against Woo, appointed by the government at Mr. Burlingame's request. We had some meetings, but as he had no powers to judge, but only to investigate, it was useless for me to deal with him. I had great trouble to secure even two or three interviews with him.

TAOTAI. I was not quite sure of the nature of his intervention.

CONSUL-GENERAL. Is Woo's letter accompanied by any voucher?

TAOTAI. It cannot be a forged document.

CONSUL-GENERAL. No; but if there was a payment there should be a voucher. Do you know the time covered by the payment?

TAOTAI. The time covered is not stated in Woo's letter.

CONSUL-GENERAL. I ought to say that Woo did not claim before the first or second arbitrations that any charter-money had been paid. He denied the charter altogether before the second arbitrators, to my knowledge. And you know that as Woo broke faith with me, I cannot advise you to trust much to his statements.

TAOTAI. The document exists. If forged or untrue, why did they not make it for the whole fourteen months?

CONSUL-GENERAL. I am sure that I cannot answer you upon that point.

TAOTAI. The steamer would seem to have been used for four months and paid for.

CONSUL-GENERAL. You will remember that witnesses for the defense said that there was no such steamer.

TAOTAI. I should be very glad, as a matter of favor to Hill, to ask the defendant to give him something.

CONSUL-GENERAL. It is not well for you to propose this, because as judge you then commit yourself to the proposition that he has a claim. On the other hand, I am not the agent of Hill, but acting in an official capacity, and with so much of the judicial quality attaching to my action that I desire to proceed within strict lines.

TAOTAI. My action in this respect would conform to Chinese usages, and would work no committal of my judgment.

CONSUL-GENERAL. I do not believe that there is anything which the defendants would offer that would be accepted by Mr. Hill.

TAOTAI. I do not believe that you will gain anything by appealing.

CONSUL-GENERAL. I cannot say. My part of the business will have been completed when I send the record up.

(It here appeared that the letter of the Taotai Woo indicated that a claim had been handed in, and rejected, not paid. The interpreter had misunderstood the Taotai.)

CONSUL-GENERAL. Then we stand just as we did before. The letter referred to entirely tallies with Hill's evidence that nothing has been paid. It will be difficult to say hereafter that anything has been paid.

TAOTAI. I think the best thing is to give judgment against Hill.

CONSUL-GENERAL. If you have entirely decided the matter in your mind, will you send in your judgment in a formal letter?

TAOTAI. I will send you the letter of Woo at once. In about a week I will send the judgment. You must not impute a wrong motive to me.

CONSUL-GENERAL. That would be foreign to my practice and feeling. I do not like to have wrong motives imputed to me and I do not inconsiderately impute them to others. Can you not send me your judgment at an earlier moment?

TAOTAI. Not readily. I shall need to consult with Mr. Drummond (one of defendant's counsel).

CONSUL-GENERAL. I ought to say to you that in America a judge could not be justified who, after a judicial hearing, should consult the counsel for either party separately. But if you wish to do so, I shall not raise any objection. I prefer to avoid an appearance of a fear of any scrutiny that you can give the case.

TAOTAI. It would not be against Chinese ideas for me to consult either party to a case after having heard the case in court.

CONSUL-GENERAL. I have stated the western feeling on this point, but shall leave you entirely free to do as you like. I wish to say that as your judgment is unsatisfactory to me, I shall, if Mr. Hill asks me to do so, and he will undoubtedly make the request, send the record to the minister at Peking, to be brought before the Tsung-li Yamen, if he shall see fit.

TAOTAI. The Yamen has no judicial functions. It will be difficult for it to make itself an appellate court.

CONSUL-GENERAL. I am sorry to hear you say this.

This substantially closed the interview.

Feng, Taotai, to United States consul-general.

I received your letter of the 18th of the 7th moon (August 18th, 1875), asking for my judgment in the case Hill *versus* Yang Ta Kee.

This case had been heard in the mixed court by Shen, Taotai who forwarded to you his judgment in the case. When I assumed the duties of Taotai, your excellency forwarded to me a printed book containing the minutes of the whole case as disclosed by the trial; moreover you and I have met several times to consult about and consider this case. I now send you, herewith, my judgment. If your judgment accords with mine, let this be the end of this case of long standing. In the printed minutes of the trial, his excellency the consul-general is represented to state that the claim for the steamer Keor Jeor was not included among the accounts against Woo, Taotai, which were referred to the arbitrators, Cunningham and Hanbury.

I find among the old records, one of Tung Chi, 2nd year, 9th moon (October or November, 1863), in which the arbitrators Cunningham and Hanbury decided that thirty-two claims should not be paid. Among them was the claim of Hunt & Company for taels 12,000 charter of the steamer Keor Jeor. A copy of this award of the arbitrators, Woo, Taotai, sent to this Yamen. And I presume you have a copy in your consulate, from which it can be easily seen that, according to the award of Cunningham and Hanbury, the case of the steamer Keor Jeor has long since been settled; *i. e.* that the money should not be paid. Now Cunningham in his testimony states that the arbitrators, when the matter was in their hands, carefully examined all the evidence supporting the various claims before they decided. In the case of the steamer Keor Jeor there was no evidence of charter-party; therefore they rejected the claim. This is clear evidence that this case has already been deliberated upon and decided.

Now Mr. Hill comes forward and adds ten months to the charter,=tls. 30,000, plus the price of the steamer, tls. 12,000, and claims in all more than tls. 50,000. In support of this fictitious claim he brings forward no proof. Therefore, as I do not see my way clear to grant his request, there is nothing more to do but dismiss the petition.

A few days ago Mr. Kreyer handed to Mr. Drummond the printed minutes of the trial. After examination, he has added six arguments; and as these arguments are not without force, I send you, herewith, a copy of them.

Judgment of Feng, Taotai, in the case Hill vs. Ta Kee.

This case was heard last year before Shen, the former Taotai, but judgment was not given.

I have now carefully examined the testimony of the witnesses and the arguments of counsel for plaintiff and defendant. The testimony of the witnesses in this case was given long after the event referred to, by persons who wished to assist the plaintiff; and none of them could say positively that Ta-Kee owed this money; therefore this testimony cannot be taken as proof of Ta-Kee's indebtedness.

On examining the old record, I found, among the claims which Woo, Taotai—in mixed court—was endeavoring to settle, in the 2nd year of Tung Chi, 9th Moon, one of Hunt and Co., tls. 12,000, for 4 months' charter of the steamer Keorjeor. This claim the arbitrators, Cunningham and Hanbury, decided should not be paid. Now Cunningham has testified in the trial of this case, saying "there was no charter-party handed in as evidence. Therefore it was on this account that the claim was thrown out. If there had been a charter-party with the Taotai's stamp affixed, we should have decided that

the claim should be paid." The arbitrators decided thus because there was no charter-party. This testimony is found in the printed book of the trial, page 36, from which it is evident that this case was settled long ago.

If, at the time the arbitrators rendered their award, Mr. Hill was not satisfied with their decision, he could, through his consul, have pursued Ta-Kee; at that time he took no steps to enforce his claim, but waited till the 13th year of Tung Chi (1874)—a period of eleven years—when, all of a sudden, he comes forward and adds ten months to his claim, tls. 30,000, and says Yang Ta-Kee is indebted to him for 14 months' charter of steamer, tls. 42,000. Moreover Mr. Hill, in his petition, says that he had arranged to sell the steamer to Ta-Kee for tls. 8,500, but he claims as the price of the steamer tls. 12,000. In these different items of amounts his statements do not agree, but conflict one with the other.

Now as Yang Ta-Kee has been dead some time, and consequently cannot testify in this case, and as many years have elapsed since the indebtedness was incurred, documentary evidence is necessary for conviction; and as Mr. Hill has nothing from Ta-Kee to prove his indebtedness, it is difficult for me to decide that Ta-Kee should be made to pay this money.

According to Mr. Hill's own statement he and Ta-Kee were the best of friends. As he took no steps to enforce his claim while Ta-Kee was living, now that he is dead it is impracticable.

This is my decision.

The six arguments of Mr. Drummond.

I. In 1863 Mr. Hill presented a claim against the Chinese Government for the charter of the steamer Keorjeor for four months. At that time the arbitrators, Jenkins and Rodgers, decided that the money should be paid. Their decision in this, as in many other claims, was, in the estimation of foreigners and Chinese, not a just one.

II. According to the book of the testimony in this case, on the 11th July, 1863, Mr. Seward, United States consul-general, wrote a statement of his opinion to this effect: "All circumstances considered, in my judgment Hill cannot legally claim against the government." It follows that at that time Mr. Seward did not approve of the decision of Jenkins and Rodgers.

III. Afterwards, the United States consul-general, Seward, and Woo, Taotai, consulted together and agreed to select two honest foreigners to decide this case. And it was agreed that if these two men decided that the money should not be paid, that should end the case, and should not be pressed in future. Thereupon, Cunningham and Hanbury—two men highly esteemed by both foreigners and Chinese—decided that this claim, for the want of evidence, could not be pressed against the government; therefore the claim could not again be pressed.

IV. It would seem, then, that this case was decided more than ten years ago, and Hill—knowing that he could not again claim against the government—brings this action against Yang Ta-Kee, and claims that Ta-Kee's heirs should pay the bill. This new claim is made, too, ten years after the death of Yang Ta-Kee, and two years after the death of Woo, Taotai. While Woo, Taotai, was living, Hill was in China. Why did he not then present his claim when there could have been witnesses? Now, after the death of Ta-Kee and Woo, he brings forward this old claim. It is not necessary that I should set forth the extravagant madness of Mr. Hill.

V. Mr. Hill now states that when the steamer was chartered, Yang Ta-Kee signed and sealed the charter-party in duplicate (*i. e.*, in English and Chinese), and that at the first arbitration Mr. Jenkins saw it; and Jenkins in his evidence testified to the same effect. Cunningham and Hanbury state that on the occasion of the second arbitration they did not see the said charter-party; they further state that had they seen the charter-party they would have allowed the claim. Jenkins is the only man who has seen the charter-party; and he was one of the first arbitrators, and will not acknowledge that he is in error. Men generally are not willing to acknowledge their own faults. Although he says he saw it, that is not sufficient evidence to establish the fact.

VI. On June 19, 1863, Mr. Seward, the United States consul-general, took down Mr. Hill's statement as follows: "In September, 1862, I made a contract with Burgevine, but as the money was not paid, the bill of sale was not delivered." (Printed minutes, page 43.) This statement does not agree with his former claim; probably his claim against Woo. Moreover the claim presented to the first and second arbitrators was for four months only; now he claims for 14 months. In this Mr. Hill contradicts himself

HILL
vs.
TA KEE.

To O. B. Bradford, esq., United States vice-consul-general at Shanghai:

In the above-named cause, heard before the United States consul-general for China and his excellency the Taotai of Shanghai, the hearing of which commenced on the 9th day of January, 1875, and terminated on or about the 23rd day of January afore-

said, his excellency Feng, Taotai of Shanghai, by his judgment, dismissed the plaintiff's petition, and the plaintiff now protests against and appeals from said judgment, on the ground that it is against evidence and the weight of evidence.

It is impossible to go into particulars of the objections to the judgment without employing language which respect for the Taotai's office will not permit me to use. It is sufficient to remark that, from the beginning of the case, the Taotai has constantly confounded Woo with Ta Kee, and persistently ignored the testimony of foreign witnesses, as the record of the trial, and more especially the minutes of the various interviews between the United States consul-general and the Taotai conclusively show.

Attached to and referred to in the judgment of the Taotai is a remarkable document, which purports to be an argument of the defendant's counsel addressed to the Taotai, out of court and after the trial was concluded, and which was never seen by the plaintiff's counsel until after the rendition of judgment. This argument, however, is little more than an echo of what was said by the Taotai at the interviews between him and the consul-general, which have been fully answered; but Articles V and VI seem to require some notice.

As to the statement in Art. V, that "Mr. Jenkins is the only man who has seen the charter-party," the plaintiff begs to call attention to his own testimony, and to ask that, in view of the peculiar course the case has taken, the affidavits of Rodgers, Lewis, Benson, and Nichols may be made part of the case.

As to Art. VI, the evidence shows that the affidavit referred to was hastily drawn, and was not written by the plaintiff. Burgevine undoubtedly attempted to settle and close up the Keor Jeor affair, but in Ta Kee's interest; and he was, at that time, so identified with Takee in the matter of the Soong Kong force, and transacted so much of the outdoor business of that force, that a negotiation with him in reference to the Keor Jeor is not at all inconsistent with the plaintiff's claim against Ta Kee. Moreover, it will be observed that the proposed arrangement with Burgevine came to nothing.

The remarks of the Consul-General, in his interviews with the Taotai, and the evidence in the case leave nothing to be said as to the use of the Keor Jeor in the interest of the Chinese Government, the terms on which she was employed, the non-payment of any sum on account of her use, &c., &c.

The plaintiff therefore prays that your honor will transmit to his excellency the Hon. George F. Seward, United States minister to China, the record of the trial in this case, including the minutes of the interviews, above referred to, between the United States consul-general and the Taotai, and the judgment, and that the above-mentioned affidavits of Rodgers, Lewis, Benson, and Nichols may accompany the record, to be dealt with as to his excellency may seem just and proper.

Dated at Shanghai the 11th day of April, 1876.

I. B. EAMES,
Counsel and Attorney for Plaintiff.

[Inclosure 3 in No. 108.]

Mr. Seward to Prince Kung.

PEKING, *July* 11, 1876.

I desire to call the attention of your imperial highness and the members of the foreign office to the inclosed pamphlet, in English and Chinese, giving the evidence in a suit brought before the Taotai, at Shanghai, by an American citizen named Hill, against the estate of Yang Takee to recover the charter money of the steamer Keor Jeor, and indemnity for her loss.

The petitioner is not satisfied with the judgment, a copy of which also I inclose, and, as it appears to me that his case has not received the consideration which it deserves, I shall be glad to meet your imperial highness, or such members of the foreign office as may be able to attend a conference, in order to determine what steps should be taken,

I have, &c.,

GEORGE F. SEWARD.

No. 7.

Mr. Hunter to Mr. Seward.

No. 77.] DEPARTMENT OF STATE,
Washington, September 7, 1876.

SIR: I have to acknowledge the receipt of your dispatch, No. 108, of the 11th of July last, relative to the case of Hill *vs.* Takee, and to inform you that the subject shall receive early consideration.

I am, &c.,

W. HUNTER,
Acting Secretary.

No. 8.

Mr. Seward to Mr. Fish.

No. 114.] UNITED STATES LEGATION,
Peking, July 25, 1876. (Received September 15.)

SIR: Referring to my dispatch, No. 107, of the 11th instant, in regard to the so-called "Ward claims," I have now the honor to hand to you a minute of a conversation had with the ministers of the foreign office on the 18th instant.

You will learn from this that there is room for hope that the government will deal with the matter in a more or less satisfactory manner.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure in No. 114.]

THE WARD CLAIMS.

Minute of an interview with the members of the foreign office July 18, 1876.

There were present, Shên, Tung, Mao, Chunghow, Chênglin, and Hsia.

Mr. Seward briefly recited the history of the claims, and asked if the ministers had considered this matter as requested in his letter of the 11th instant. There seemed no disposition to respond, and Mr. Seward went on to say that he was familiar with the business from its beginning, and if any points were not clear he would be glad to explain them.

One of the ministers suggested that the matter should be dealt with at Shanghai. Mr. Seward responded that he exhausted effort at Shanghai years ago. Owing to Woo's official rank, he was not amenable to any court there, and, as he had refused to pay, the case could only be dealt with here.

It was suggested again that there were no proofs of the merits of the claims. Mr. Seward responded that he could not venture to adduce proof as to the merits of individual claims. They had all been decided upon in 1864 by arbitrators duly appointed, and their award could not be opened.

It was suggested that there was no proof of submission to arbitration. Mr. Seward then presented a copy of the submission and an original note from Woo, stating the substance of the award, his acceptance of it in part, and refusal to abide by it in other respects. It was suggested again that this did not prove a submission; the original document must be produced. To this Mr. Seward answered that the paper was at Shanghai and will be forthcoming.

During all the conversation the disposition of some of the members of the Yamen was to treat the subject very lightly. This disposition became so marked indeed that Mr. Seward considered it necessary to say, in a serious way, that he had not brought

forward a matter which could be treated with ridicule. The claims had been submitted to a painstaking examination. They were just. The Government of the United States has twice expressed the opinion that payment should be enforced. He was willing, as he had said, to explain any points which were obscure, but he could not think of discussing business matters in any other than a serious and sober way. This led to a change of tone on the part of one or two ministers who had spoken in the vein complained of, and, after some further talk, the ministers began a conversation among themselves, of which enough was understood to indicate that the matter would be treated carefully if the submission to arbitration should be produced.

From what was said, Mr. Seward understood that the Yamen might be brought to give orders to the provincial authorities to enforce the award against Woo's estate. He thought it necessary to say to the ministers, therefore, that he could not treat the claims as personal to Woo. Woo was then officer in charge of military affairs. As such he had signed and sealed the submission, and the claim must be held to lie against the government.

Considering the fact that this business has been open for thirteen years, and has been several times unsuccessfully brought before the foreign office, the general result of the conversation seemed not unsatisfactory.

PEKING, *July* 19, 1876.

No. 9.

Mr. Seward to Mr. Fish.

No. 119.] UNITED STATES LEGATION,
Peking, July 29, 1876. (Received September 15.)

SIR: I have the honor to hand to you herewith the notes of two interviews which I have had with the foreign office in regard to the Hill-Takee case.

You will see that the ministers have insisted upon referring it to the viceroy at Nanking. Their proposal looked to this reference as a finality, but I refused to assent to this, and after much argument they declared, substantially, that the final determination of the matter rests with the foreign office.

You will understand the difficulties which attend efforts to secure justice for our countrymen in China, from what I have heretofore written to the department, more particularly in my trade report of last year, and in my notes on the revision of the German treaty. This case from its inception furnishes an adequate commentary on my statements.

I have had, in dealing with it, to create a court of first instance. It was only after much urgent pressure that I could get the Taotai, Shên, and his successor, Fêng, to hear it. If the original defendant had been living I could not have got it into court at all, because he was an official, and no one at Shanghai had authority to entertain an action against him. Upon the trial at Shanghai I had to take measures to secure a record both in English and in Chinese. The minutes which Chinese magistrates take are meager in the extreme, and practically useless for purposes of appeal. To verify the record I had no recourse but to submit it to the counsel for the two parties. Counsel are not permitted to appear in Chinese courts proper, and it was in deference to my wish that they were allowed in this case. After the case was heard, I was six months in drawing from the magistrate a judgment, and then it was unfavorable.

To complete the chapter of difficulties, I am told upon presenting the case here that it must be referred to a provincial officer, and that his decision will be final, and it is only after protracted argument that I am able to show the ministers that such a reference is unnecessary and unsatisfactory, and am obliged, after all, to assent to the form.

From the beginning to the end of this case, so far, there has not been shown by any Chinese official to whom it has been presented any desire to get at the facts and to do justice. It is not too much to say that this is the case in nine out of ten of the more difficult matters presented to the Chinese. Success in defending our country-people against wrongs here can only be attained by the most painstaking, careful, and patiently persistent effort. As a school for patience, I should pronounce this field of official effort quite unrivaled.

In my dispatch No. 108 I asked your instructions in regard to this matter. I anticipated then that delays would occur, which would enable me to receive your advice before the case could be brought to a head. The reference to the viceroy renders this quite certain.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 119.]

HILL *vs.* TAKEE'S ESTATE.

Memorandum of an interview regarding this matter between the United States minister and the members of the foreign office, Shen, Tung, Mao, Chŭng, Chên, and Hsia, at the foreign office, July 18, 1876.

Mr. Seward asked whether the ministers had examined the minutes of the court which he had sent to them. They said they had done so. Mr. Seward said that the petitioner is dissatisfied with the judgment, and that, in his opinion, it is not a just decision. His only course was to ask them to discuss the whole matter with him, and to send orders to Shanghai to enforce the payment of Hill's just dues. Shên asked if the Taotais Shen and Feng had not decided against Hill. Mr. Seward said they had. The question was whether they had duly weighed the evidence. It was all in the book before them. So satisfied was Mr. Seward of the merits of Hill's claim that he would not hesitate, if the ministers wished, to submit the evidence to his colleagues, the ministers of other governments, or to any of them, and to abide by their opinion.

One of the ministers suggested that there was no proof of the merits of the claim. To this Mr. Seward responded that he was willing to take the evidence and go over it step by step. If the ministers had not examined the case, as it was evident they had not, they should not say there was no proof.

As much time had been consumed in this discussion and the discussion of another matter, Mr. Seward then said that he would visit the yamen again soon to speak further about the case.

G. F. S.

PEKING, *July* 19, 1876.

[Inclosure 2 in No. 119.]

HILL *vs.* TAKEE.

Minute of an interview between Mr. Seward and the foreign office July 27, 1876. *Present, Shên, Tung, Mao, Chung Chêng, and Hsia.*

After desultory conversation Mr. Seward said that he had come to discuss the Hill-Takee case, and asked whether the ministers had examined the record. They intimated that they had done so. Mr. Seward then asked whether they were in doubt as to the merit of the claim. To this Shen responded that there was no proof that the steamer had been chartered, and another minister said that, if chartered, the charter-money no doubt had been paid. To this Mr. Seward responded that the record contained ample evidence that the vessel had been chartered, and Mr. Hill's sworn declaration that the charter-money had not been paid. If it had been discharged the defendants would have produced the evidence of the payments made. Tung then detailed, at much length, the procedure in regard to accounts against the government, how they must be approved by certain local officials, indorsed by the viceroy and sent up to the appropriate board, &c. To this Mr. Seward responded that while the

steamer had undoubtedly been used for military purposes the charterer was being dealt with as a private person. It was no matter of concern to the claimant how the charterer should get his money from the government. As, however, the vessel had been used by the government under charter made by an officer of the government, the claim might become one against the government, if they should fail to enforce payment by the defendant.

Here one of the ministers said that the affair was a local one at Shanghai, and should be settled there, and that now Takee is dead it will be difficult to get at the facts. Mr. Seward responded that long continued and earnest efforts, culminating in the trial at Shanghai, had been made there to settle the case, without effect, and while he was sorry to trouble the ministers, he had no recourse but to come before them.

At this point a conversation was held between the ministers, after which Shen said that they would have to refer the matter to the viceroy at Nanking. Mr. Seward responded to this that the evidence was all before the ministers, and it is for them to decide what is to be done with the case. The viceroy has not been named as an officer who has appellate judicial powers, and he is not within the reach of the claimant, while he is approachable by the defendants. It is a case in which reference to the viceroy is unnecessary in every way, and against which course many weighty objections may be urged.

To this Chung How said that the minister should remember that the methods of government in China are all determined, and that it is difficult to vary from them. The reference to Nanking must be made, not to put off the case, but because it is the usual course of business. To this Mr. Seward said, "What, then, are the functions of the viceroy? Does he decide the case?" Chung answered, "Yes." "And if his decision be unsatisfactory?" "Then there is no recourse," was the prompt and positive response.

Here Mr. Seward urged that he could not assent to this. It would be very wrong for him to relegate the case of his countrymen to a magistrate who would certainly hear the statements of the defendant, and who cannot be approached by the claimant; with whom the minister himself has no relations. And knowing very well that there is no rule of the Chinese system which establishes the viceroy a final arbiter in the lawsuits of his own countrymen, and strongly impressed with the danger of admitting him in such capacity in cases in which foreigners are the parties claiming, he pressed the point closely, and finally secured from the ministers a reversal of Chung's *dictum*. Believing, however, that to persistently refuse to assent to any reference to the viceroy would afford the ministers an opportunity to declare that they could proceed in no other way, he told them that while he objected on principle to the reference he would assent to it, provided it was clearly understood that the viceroy's conclusions are not to be considered binding upon the minister in any way; that in fact the foreign office sought it only to assure themselves that the defendant had had an opportunity to make his case, and for the benefit of the viceroy's judgment. Their response to this was not so clear as the minister wished, and he said, "Who, then, am I to consider the principal in this negotiation, yourselves or the viceroy? Is he, or is he not, your superior?" To this, the answer came, "Why, of course; no one is superior to the prince," meaning Prince Kung, who is at the head of the foreign ministers.

Mr. Seward then said that he would be obliged if they would at once take the viceroy's opinion, and asked them to remember, in sending the papers to him that the case had been tried in open court, and a record made, which record was before them; that the propriety under these circumstances of his taking further evidence was not manifest; that if he did so it would be objected to when sent back as *ex parte*; and also that he held to the point that the case is an international one, and in the absence of all rules for the hearing of appeals in such cases, he must look to the government itself to see justice done.

The conversation did not reach the merits of the case, although it was extended through two hours and a half.

G. F. S.

PEKING, *July* 27, 1876.

No. 10.

Mr. Hunter to Mr. Seward.

No. 83.] DEPARTMENT OF STATE,
Washington, September 21, 1876.

SIR: Referring to your dispatch of the 11th of July last (No. 108) in relation to the claim of Charles E. Hill against the Chinese Government,

growing out of the charter of the steamer Keor Jeor by Takee, an agent of that government, I have now to acknowledge the receipt of your dispatch of the 29th of that month (No. 119) on the same subject, your No. 108 with the printed documents accompanying it which appeared to give a detailed and circumstantial history of the claim were made the subject of a careful examination. From this examination it appears to the department that Mr. Hill has a valid and just claim, which in equity and on principles of public law entitles him to receive reasonable and just compensation for his losses; and it is also the opinion of the department that the liability is properly against the Chinese Government, and not against the estate or legal representatives of Takee. The Keor Jeor was chartered for the Chinese Government and was used in that service, and, as the facts show, was rendered essentially serviceable in suppressing a rebellion which threatened the existence of the Empire. This service was rendered with the knowledge of and under the direction of the recognized Chinese authorities.

Takee in the whole transaction acted for the government, and it is a well-settled principle of public and municipal law that a public agent acting for the government, even though he may contract and carry on the business in which he may be thus engaged in his own name, is not to be held personally liable.

Your course in the matter appears to have been judicious and prudent and meets with the approval of the Department, and you are authorized to continue your efforts for the settlement of the claim.

The transaction originating, as it did, in a contract voluntarily entered into by Mr. Hill limits his claim for the interference of this government to the exercise of its unofficial good offices, unless it shall appear in the course of the proceedings that the measures adopted by the Chinese authorities in regard to the matter shall amount to a failure or denial of justice, in which case the claim might be made to assume a diplomatic character.

It also occurs to the department from the examination made that the claimant somewhat exaggerates the amount, and that the true measure of damages is the taels 12,000 fixed by the charter-party as the wages of the boat for four months, and, added to that, taels 12,000 agreed upon in the charter-party as liquidated damages as value of the boat in case she was not returned. These two amounts, with interest from the time when the vessel should have been returned to the owner, would seem to be the amount to which the claimant is fairly entitled.

You will keep the department fully informed of your proceedings and progress in relation to the matter.

I am, &c.,

W. HUNTER,
Acting Secretary.

No. 11.

Mr. Seward to Mr. Fish.

No. 142.] UNITED STATES LEGATION,
Peking, October 16, 1876. (Received December 14.)

SIR: Two days since I called at the foreign office to bring up various matters, and among others spoke of the Keor Jeor case (Hill *vs.* Takee) of which I have written in my dispatches, numbers 108 and 119, asking

whether the report of the viceroy at Nanking had been received. The members present responded affirmatively. I asked whether it was favorable, and they responded that he had reported that "there are no proofs."

Presuming from the nature of the response and the tone of the ministers that they were indisposed to approach the business, I pointed out briefly that the discussion with them of the Keor Jeor case and the Ward claims is exceedingly irksome to me, there are other matters than claims to take up our attention; that from my long and intimate knowledge of these matters I must feel the more sensitive as to their manner of dealing with them, and ended by suggesting an arbitration. They responded that the relations of China and the United States are peculiar; that there has never been anything unpleasant in our intercourse, and that they are naturally anxious to meet our views, but that they cannot see a way in this instance. I answered that the Ward claims were pressed upon them by your instructions, and that your views in regard to the Keor Jeor claim would soon be known; that I assumed a certain responsibility in saying that I would be prepared to assent to an arbitration at all, and that I felt sure there would be difficulty in understanding a refusal of this.

Without responding directly, they remarked that they have not the power to act contrary to the views of their provincial authorities. To this I said that my government would feel some surprise that the central authorities of the empire are unable to deal with cases so simple and unimportant as these. The response to this indicated that they would not like to have me make such a report, but I declared, in turn, that I am required to report all my official acts and interviews. One of the members then asked why I had not arranged the business at Shanghai. I responded that the failure had not been mine; that in the case of the Ward claims in particular the money had been sought from a person of official rank; that there was no court at Shanghai into which the claimants could pursue him; that the business thus came to be one of political representation, and that having failed to secure a settlement after years of effort at Shanghai, it was brought here as a matter of necessity. I then again appealed to them to relieve me of an irksome duty by accepting my intimation, and referring the cases to arbitration. In answer to this, they again declare that it is difficult for them to deal with matters which have originated at a distant locality.

The whole conversation was of an extremely unsatisfactory tenor, and left me much disposed to repeat to you a statement which I have already made in connection with these matters, that I can see no disposition on the part of the foreign office to take them up in such manner as to arrive at a just decision.

I am greatly hampered in placing these matters before the government by the fact that important documents are missing. I refer to the Chinese signed copy of the submission to arbitration in the case of the Ward claims and the charter-party in the Keor Jeor case. Under these circumstances I see no hope of success unless I can bring the government to consent to an arbitration, and I do not like to urge this proposal until I have your views in response to the dispatches written prior to my departure for Chefoo at the end of July. If authorized by you to express strongly your sense of the justice of the claims, I can, perhaps, through an arbitration, effect a satisfactory settlement, but not otherwise.

I must point out to you that the difficulties which I am meeting are radical, and are not exceptional, or growing out of the peculiarities of the cases. I stated to you in my trade report for last year, in my dis-

patch, No. 48, in response to your circular letter asking information regarding the prosecution of claims, and in my dispatch, No. 96, in regard to the German treaty scheme, how utterly unsatisfactory is the situation in this respect.

But I doubt whether it will be quite possible for you to understand the entire hopelessness of the situation. It is difficult to get cases before the so-called courts at the ports. It is more difficult to procure intelligent and righteous judgments. It is still more difficult to secure the enforcement of judgments. In case of failure in any one of these directions, there is no provision for appeals, saving, perhaps, to the provincial courts, after the native fashion, and these are practically inaccessible to the foreign suitors. If, passing these, one comes to the government, he is told that it is difficult to deal here with matters which have arisen in the provinces, and if pressed to their responsibility and the merits of the matter are to be entered upon, one finds that only trivial points are sought out, and these reiterated over and over, regardless of all substantial facts and considerations.

In the two cases in hand, the foreign office knowing that the submission to arbitration in the one instance, and the charter-party in the other, have been lost, or, as is probably the case, stolen, say "there are no proofs." And they repeat this statement in face of my declaration that I myself drew the submission to arbitration, and executed it on the one side; that the report of the arbitrators is in my hands, and that I am able to show them a letter from the person claimed against, who quotes the award at length, and in face of conclusive evidence that there was a charter-party, and that the chartered ship was used under it, and supporting evidence in each case of the most conclusive sort.

It is now my intention to avoid approaching the Yamen on this question until I receive your instructions in the Keor Jeor case. If you instruct me to proceed, I shall ask for a full meeting of the Yamen, including the prince, and then again urge that they shall either enter upon the consideration of the cases in a serious way or refer them to arbitration.

I have, &c.,

GEORGE F. SEWARD.

No. 12.

Mr. Seward to Mr. Fish.

No. 149.] UNITED STATES LEGATION,
Peking, October 27, 1876. (Received December 20.)

SIR: Since I wrote to you on the 16th instant my dispatch No. 142, I have received the inclosed letter from the foreign office in regard to the Hill-Takee case.

I have, in response, addressed a letter to the foreign office, a copy of which I inclose.

This letter states that I do not desire to press the Hill-Takee claim and the Ward claims upon them until I receive instructions from you. I have, however, asked the foreign office to call for certain papers referred to in the report of the Taotai at Shanghai, which is embodied in the answer they have made to me, and to ask the viceroys at Nanking and Tien-Tsin for information which I have stated.

I have much hope that, among the papers called for, will be found the document, or a copy of it, by which the Ward claims were submitted to arbitration. It is this document the consulate copy of which I have before referred to as having been lost or stolen, and in consequence of the absence of which the foreign office have declared that there is no proof that the claims were ever submitted to arbitration.

If this be found, it will be much easier to deal with the Ward claims, and if the viceroys respond, as they should, to the application which I have asked the foreign office to make to them, the settlement of the Hill-Takee case will be promoted.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 149.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication:

Because of a dispatch received from your excellency in the case of Hill *vs.* Takee, requesting that orders be issued enforcing the immediate payment of the claim, this office instructed the southern superintendent of trade to make a searching investigation, and so informed your excellency in reply.

This office is now in receipt of the report of the southern superintendent of trade, covering a statement of the Shanghai intendant that he had received, through the superintendent of trade, the dispatch of the foreign office, with the request of your excellency that, in the case of Hill *vs.* Takee, Yang Takee be required to make immediate payment of whatever sum is shown to be due, with a suitable interest, and ordering that a suitable adjustment be made in accordance with the facts of the case presented by Mr. Seward, &c.

In the case of the steamer Keor Jeor, there is not the least evidence to show whether Yang Takee chartered or did not charter her. And now that the matter has been allowed to rest for many years, and Yang himself has been dead for a long time, there is still less basis on which to rest an investigation. During Mr. Seward's term as consul-general at Shanghai, Hill claimed the charter money for the steamer Keor Jeor, and at that time Shen, then intendant of circuit, summoned Fu Icho and others and examined them, but as there was no written evidence of the debt could not enforce payment. After the taking of his office by the present intendant, he carefully examined the printed evidence as presented, but found no certain evidence in support of the claim.

Because of the great lapse of time any recovery of the claim is exceedingly difficult; and although the entire case has been repeatedly and exhaustively discussed, it stlll remains unsettled. From an investigation of the printed volume of evidence, it appears that the claim is for taels 12,000. In the time of Intendant Ying, he made certain inquiries of the Ex-Intendant Woo, and received in response a full statement, which is still accessible. The present intendant has also examined carefully the award of Messrs. Cunningham and Hanbury in the arbitration of the accounts of the "Ward force."

Inasmuch as no evidence appeared that the "Ward corps" had used this vessel, the before-mentioned arbitrators threw out this claim of taels 12,000 for four months' charter, and other claims for repairs, &c. Inasmuch as the claim of four months' charter money was rejected, still less can any justice be shown in the claim for fourteen months' service. Further, if the steamer was actually in use for fourteen months, why did Hill, at that time, present a demand for only four months' charter? The unsoundness of the entire claim may be seen from this. The present intendant accordingly decided against the claim, and so informed the consul-general.

The entire evidence in the case as printed in both English and Chinese; the decision of the intendant; the entire accounts of Woo, intendant, with the "Ward corps"; the original claim of Hill against Takee—all these documents are sent as evidence, and their examination is requested. Thus the intendant reports to the southern superintendent of trade.

It appears in the case of the claim for charter money of this steamer that Yang Takee having been long time dead, Mr. Hill renews his claim. Shen, the former intendant, replied that in the absence of any evidence of the claim it could not be recovered. After the intendant Feng had entered upon the duties of his office he also examined the claim, decided that there was no evidence in its favor, and so rejected it.

His excellency Mr. Seward now addresses the foreign office with the request that the claim be ordered to be paid, and remarks that the charter-party has been lost. In a claim for money, how can the single assertion that the documentary evidence has been lost be accepted in lieu of evidence? Since in the cases where the proof is actually lost no suit can be prosecuted, how much less in a case where no proof ever existed. Since Hill can produce no evidence it becomes more credible that Yang Takee never used his steamer. Full copies of the papers, submitted by the intendant, are sent up for examination.

The foreign office begs leave to remark that, in the prosecution of money-claims, the question whether evidence (written) exists of the obligation should be allowed to decide the claim. If, in the absence of other evidence, the mere word of witnesses be accepted, they will be produced in favor of both plaintiff and defendant. In the present case, by illustration, foreign witnesses declared that the steamer was employed, while native witnesses asserted that she was not. The counsel for the plaintiff said the claim ought to be paid, while those for the defendant said it ought not. Thus each party had its own voice. Since the claimant brings no proof of the debt, the respondent, of course, asserts that no proof is brought because no debt ever existed.

This claim has existed for more than ten years; the party is dead and the vessel destroyed. The charter-party and bill of account are not discoverable. If it is insisted that without these the claim shall be enforced, it will be difficult to explain to the defendant the justice of such a course. Your excellency is requested to give the matter careful consideration.

PEKING, *October* 23, 1876.

To His Excellency GEORGE F. SEWARD, *&c., &c., &c.*

[Inclosure 2 in No. 149.]

Mr. Seward to Prince Kung.

PEKING, *October* 26, 1876.

I have the honor to receive the letter which your imperial highness has addressed to me, under date of the 23d instant, in regard to the case of Hill *vs.* Takee.

As it is manifest that your imperial highness and their excellencies the associated ministers of the foreign office do not regard the claim of my countryman with favor, I shall refrain from asking you to discuss it with me until I have received the instructions of my government.

In order, however, that no time may be lost when the moment for the discussion shall come, I beg leave to ask your imperial highness to read the inclosed memorandum of conversations which I held with the Taotai, Feng, at Shanghai, when I was urging the case upon his attention there. You will find in this memorandum my answer to the points made by him, as stated in the report made by head to the southern superintendent of trade.

It seems desirable to ask his excellency the southern superintendent to call upon the Taotai for the correspondence between Ying, Taotai, and the ex-Taotai, Woo, and the papers in regard to the award of Messrs. Hambury and Cunningham, to all of which he refers in his statement to the superintendent of trade.

It is desirable also, since doubt is cast by the Taotai upon the question whether the steamer Keor Jeor was used for military purposes at Shanghai, to make inquiries in regard to the matter from his excellency the viceroy at Tientsin, who, at the time when the steamer was so used, was directing military affairs in that quarter. Will you, therefore, please ask the viceroy whether the steamer Keor Jeor was not used in connection with the Ward corps and otherwise for military purposes, at and near Shanghai, during the year 1862–'63 for a period of about fourteen months; whether she was not captured when in such use by certain persons employed by the insurgents, and whether he has any knowledge that the charter money and an indemnity for the loss of the steamer has been paid, or any part of it.

There is a gentleman resident at Nanking, and now or until lately in charge of the arsenal there, who was in the imperial service when the steamer was captured. His name is Macartney. I shall be obliged if you will ask his excellency the southern superintendent of trade to call upon him for a statement, and for your information I may tell you that he went from Shanghai to Sunkiang on duty in the steamer; that he had just landed from her at Sunkiang when she was captured, and that he saw the captors take her away without being able to stop them.

I shall be greatly obliged if your imperial highness will communicate to me all the papers looked for, and the statements of the two viceroys when they shall have been received.

I take this occasion to assure your imperial highness of my high consideration.

GEORGE F. SEWARD.

PEKING, *October* 29, 1876.

No. 13.

Mr. Fish to Mr. Seward.

No. 96.] DEPARTMENT OF STATE,
Washington, December 19, 1876.

SIR: Your dispatch of the 16th of October, 1876 (No. 142), in relation to the claim of Mr. Charles E. Hill against the Chinese Government, growing out of the charter of the steamer Keor Jeor, has been received.

Referring to the department's instruction, No. 83, of the 21st of September last on that subject, I have only to add that the claim of Mr. Hill appears to me to be founded in justice and equity.

In the instruction referred to, you were advised that, in the opinion of this department, the claimant's estimate of his damages was somewhat exaggerated, and that the true measure of damages was four months' pay for the service of the boat, at taels 3,000 per month, with taels 12,000, fixed upon in the charter-party, as the value of the steamer, and which latter sum, in case of her loss, was to be taken as liquidated damages. That conclusion was based on the view of the case taken by the law-officer of the department, who, adopting the ordinary legal rule in such cases, overlooked, as it appears to me, the peculiar circumstances attending this case, which I conceive takes it out of that rule.

The grounds of this rule are that the property when lost to the owner, no matter from what cause, may be replaced at ordinary cost, and, consequently, that the value of the property, and not its use, is the equitable measure of damages from the date of the breach or failure to return. The claimant, however, conceives that as he could not in China replace the steamer at anything like the ordinary cost, and that as the charter-party contained a clause "allowing the Chinese Government to continue to use the steamer as long as they chose by paying the same amount monthly," he is entitled to charge at the same rate, taels (3,000) three thousand per month for the whole time, fourteen months—that is, from the date of the charter to the date of her capture and loss. That view you are at liberty to adopt if, upon full investigation, you are satisfied that the terms of the agreement were as stated.

With reference to the rate of interest to which the claimant conceives himself entitled, the commercial usages of the country usually determine this. As the claim, however, is of long standing, the estimate of interest should partake of the nature of damages and should be considered equitably.

While it appears to the department that the proofs already adduced fully establish the claim, I, nevertheless, transmit to you herewith a copy of affidavits of John Kearney Rodgers and J. Burge Rawle Lewis, E. S. Benson and J. Howard Nicholls, recently presented by Mr. Hill in further support of his claim.

Following the directions contained in the instructions of the 21st of September, and those now conveyed, you will urge a speedy settlement of the matter; and while the adjustment of the claim is supposed to properly devolve upon the imperial government, it is not held to be important whether such adjustment be made by the government or by the agent, Takee, who made the contract with Mr. Hill.

I am, &c.,

HAMILTON FISH.

Deposition of John Kearney Rodgers.

UNITED STATES OF AMERICA, *State of Minnesota, County of Hennepin, ss:*

John Kearney Rodgers, being duly sworn, on his oath deposes and says that he resides in the city of Minneapolis, in the aforesaid State and county.

That from the year 1860 to the year 1866 deponent was residing at Shanghai, in the Empire of China.

That, after the death of Gen. F. T. Ward and the suppression of the Chinese rebellion, there were certain claims against the Chinese Government, contracted on behalf of the said government by the said Ward and his successors, which said claims were disputed by the Chinese officials, and payment thereof refused.

That the aforesaid claims were, in or about the year 1863, referred to arbitrators; the United States consul at Shanghai appointing John Kearney Rodgers, this deponent, as one of such arbitrators, and the Chinese officials appointing Frederick H. B. Jenkins.

That among the aforesaid claims thus referred to the said arbitrators was a claim of Charles E. Hill, then being at said China, for the use of the steamer Keor Jeor, and indemnity for loss if not returned.

That said claim of Charles E. Hill was based upon a contract or charter-party, written in both the English and Chinese languages, and signed on the English side by the said Gen. F. T. Ward, and on tha Chinese side by Takee, a rich Chinese banker and official of the Chinese Government, and sealed with his chop or stamp; and the same was also signed duly by said Charles E. Hill.

That during the said arbitration the said charter-party was in the possession of this deponent and the other said arbitrator, and, upon said charter-party and evidence that the said steamer was in the active employment and use of the Chinese Government, said arbitrators decided and adjudged that the said Charles E. Hill was entitled to have and receive the full amount claimed by him.

That at the conclusion of the labors of the said arbitrators, the said charter-party, then being in the possession of this deponent as such arbitrator, was by this deponent delivered, with all the other papers of whatever kind or nature, to the United States consulate at said Shanghai, since which time this deponent has not seen said charter-party.

That, to the best of deponent's recollection and belief, the said charter-party was for four months, at taels 3,000 per month, with a clause allowing the said Chinese Government to continue to use the said steamer as long as they chose by paying the same amount monthly, and contained an indemnity clause for taels 12,000.

J. KEARNEY RODGERS.

Subscribed and sworn to before me this 9th day of January, A. D. 1872, at Minneapolis, Minn.

JAMES W. LAWRENCE,
Notary Public, Hennepin County, Minn.

Deposition of Burge Rawle Lewis.

I, Burge Rawle Lewis, a citizen of the United States, at present residing in Hiogo Japan, make oath and say as follows:

1st. That in the year 1863 I was clerk in the house of H. Fogg & Co. at Shanghai; that Charles E. Hill, a citizen of the United States, was at the same time a clerk in the said house.

2d. That I am cognizant of the fact that the said Hill did purchase, through one J. Howard Nichols, a small steamer, which came out from England in pieces, which the said Hill had put together at his expense by the engineering firm of Marshall & Co., at Shanghai.

3d. That I personally knew General F. T. Ward when he commanded the force of Chinese troops known as the "Ever-victorious army," which troops were officered by foreigners and had their headquarters at Sunkiang; that said Ward was often in Shanghai, and much of his time was at the said house of H. Fogg & Co.; that during such visits I often transacted business with him on account of the said house of H. Fogg & Co.

4th. That I remember hearing several conversations between the said Ward and Hill about chartering the small steamer above mentioned, and know that the said Ward did, while I was in the said employ, charter from the said Hill the steamer above referred to, which he, the said Ward, and the Chinese named the Korjeor, and that she was constantly employed by the Sunkiang force until the capture.

5th. That some time about the month of July in the same year the said Hill left the

house of H. Fogg & Co. aforesaid, and joined the house of Thomas Hunt & Co., of the same place, and that still later I left the house of H. Fogg & Co. aforesaid, and engaged with the house of Thomas Hunt & Co. aforesaid.

6th. That while in the employ of the said Thomas Hunt & Co. I remember seeing the charter-party made between the said Hill and the said Ward for the said steamer "Korjeor." It was written in English and Chinese, and signed by both the said Hill and Ward. The portion in Chinese, which I believe was a translation of the English, bore a Chinese chop or stamp.

7th. That to the best of my memory the said charter-party contained a clause to indemnify the said Hill in case the said steamer was lost, in the sum of taels 12,000, and that the monthly charter-money was taels 3,000.

8th. That about the month of April, 1863, I left the house of Thomas Hunt & Co. aforesaid, and on the 16th of June, 1863, I entered the United States consulate as clerk.

9th. That, to the best of my knowledge and belief, shortly after this the said Hill came to the office with a Chinese named Takee, and executed a bill of sale of the said steamer in favor of a mandarin, whom the said Takee named; that this bill of sale was stamped either by George S. Porter, at that time deputy consul, or myself; that the consideration mentioned in the said bill of sale was taels 8,500; that there was also a memorandum made of the sum due to the said Hill for the use of the said steamer up to the date of the bill of sale, in English and Chinese; the former was written by the said Hill and the latter by the Chinese scribe or teacher to the interpreter of the consulate.

That the bill of sale and memorandum aforesaid were deposited in a large safe, one which had been furnished by the United States for the keeping of ships' papers; this safe was usually open during office hours; that such bill of sale and memorandum were to be held in the consulate until said Takee should produce an order from the said Hill for them.

10th. That the said order from the said Hill to the said Takee for the said bill of sale and memorandum was never produced to me, and I did not deliver the papers.

11th. That about the year 1867 the said Hill returned to China from the United States and called for the said bill of sale and memorandum, but they could not be found.

12th. That the said Hill, on or about the same time, called for the said charter-party, but it could not be found.

13th. That I remember having seen the said charter-party among the so-called "Ward claim papers" in the consulate, which had been returned by the first arbitrators, J. K. Rodgers and F. H. B. Jenkins.

BURGE RAWLE LEWIS.

CONSULATE OF THE UNITED STATES OF AMERICA, OSAKA AND HIOGO, JAPAN.

On this twelfth day of August, A. D. one thousand eight hundred and seventy-four, before me, Daniel Turner, consul of the United States of America for Osaka and Hiogo and the dependencies thereof, duly commissioned and sworn, personally appeared Burge Rawle Lewis, to me personally known to be the person described in and who executed on oath the annexed affidavit, and who acknowledged to me that he executed the same freely and voluntarily to and for the uses and purposes therein named.

Given under my hand and the seal of this consulate the day and year in this certificate first above written.

DANIEL TURNER, *Consul.*

Deposition of E. S. Benson.

I, E. S. Benson, an American citizen, now residing in the Empire of Japan, make oath and say as follows:

On or about the month of September, one thousand eight hundred and sixty-two, and soon after the death of Frederick T. Ward, lately commanding the Chinese disciplined troops (known as the ever-victorious army) acting against the rebels in the region about Shanghai, in the Empire of China, General Henry A. Burgevine took command of said troops and appointed me his quartermaster-general.

I continued to act in this capacity for General Burgevine until some time in the month of January in the following year, when, in consequence of a dispute between him and Takee, a Chinese official, his connection with the Chinese troops ceased.

When I joined Burgevine the steamer Keorjeor, owned by Charles E. Hill, an American citizen, was in the employ of the Chinese Government, and a charter-party for said steamer was for some time in my possession, and was subsequently handed over by me to the said Hill.

No payment for said charter was made through me, nor, to the best of my belief, was any payment made in any other manner.

When I left Shanghai for Japan, in the month of May following, the steamer Keorjeor, to the best of my knowledge and belief, was still employed by the Chinese Government.

Yokohama, Japan, April 23, 1873.

E. S. BENSON.

Sworn and subscribed to before me this 23d day of April, 1873.

GEORGE N. MITCHELL,
United States Deputy Consul.

Deposition of J. Howard Nichols.

I, J. Howard Nichols, an American citizen, now temporarily residing at Shanghai, make oath and say as follows:

In the years 1861 and 1862, and some time thereafter, I resided in the Empire of China, at Shanghai, Amoy, and other open ports. That in 1861 I purchased for Mr. Charles E. Hill, through Tait & Co., Amoy, an iron steamer. Said steamer was shipped from England in sections, and delivered to said Hill at Shanghai, where it was put together, tried, and the purchase-money duly paid.

Early in the summer of 1862 this steamer was chartered, through General F. T. Ward, to the Chinese officials, for the use of the government troops then stationed at Sung Kong, and at that time commanded by said General Ward.

This steamer was called the Keorjeor, and was constantly employed by the Sung Kong force from the time of her charter through Ward until her capture.

J. HOWARD NICHOLS.

Sworn to before me at Shanghai, January 3, 1874.

O. B. BRADFORD,
Deputy United States Consul-General.

No. 14.

Mr. Seward to Mr. Fish.

No. 190.] UNITED STATES LEGATION,
Peking, January 9, 1877. (Received March 9.)

SIR: I had the honor to receive, on the 13th of November, your instruction No. 83, in regard to Mr. Hill's claim for the use of the steamer Keor-Jeor.

My time was much occupied at the moment, but on the 7th of December I addressed a note to Prince Kung, asking for an interview in order to place before him the matter mentioned above and the "Ward claims."

With my note I sent two memoranda—one stating the case in favor of the Keor-Jeor claims, the other that in favor of the Ward claims, copies of which I transmit to you herewith.

You will remark that the course which I have taken is that of a formal diplomatic representation.

You will, I think, justify this line of action, when you bear in mind the fact that the Ward claims, with which the Keor-Jeor matter is closely allied, have been before this government for the last twelve or thirteen years, and that the efforts of successive ministers have not advanced their settlement in any sensible degree.

The Chinese have, in fact, shown the least possible disposition to receive our representations in a serious way. Take for, instance, the following language, which was used by the prince in a letter which he addressed to me in regard to the Keor-Jeor matter, on the 23d of October, a copy of which was sent to you with my dispatch No. 149:

> In the presentation of money-claims, the question whether documentary evidence exists should decide the matter.
>
> If the mere words of witnesses be accepted, they will be produced in favor of both

plaintiff and defendant. To illustrate, in the present case foreign witnesses declared that the steamer was employed, while native witnesses asserted that she was not. The counsel for the plaintiff said that the claim should be paid, while those for the defendant said that it ought not. Thus each party has its own voice. Since the claimant brings no proof of the debt, the respondent asserts, of course, that no proof is brought because no debt ever existed.

You will see that this government not only disputes the given claim, but that it lays down a principle in regard to evidence which is at variance with all our ideas, and which I am bound to say is not and cannot be acted upon among themselves. It is not an easy task to deal with a people whose declarations are so loose. Efforts with them must, of course, follow measurably the usual rules, but a disposition to adhere over-rigidly to the procedures observed in Western countries would almost certainly defeat the objects in view. You will remark also that I have stated both claims as good against the Chinese Government.

Your instruction to do this in the Keor-Jeor matter was explicit, and, as the circumstances were identical, I had no hesitation in placing the other business on the same basis.

In presenting the Keor-Jeor matter I made no abatement from the sum which Mr. Hill has asked.

Your dispatch No. 83 indicates that he claims more, perhaps, than he should. It has seemed to me that his claim is based on the alleged contents of the charter-party, and agrees with the evidence. As it may not be necessary to declare an abatement of the claim before your further instructions can be received, I beg leave to call your attention to the point, and to ask whether I am to consider the conclusion expressed in your dispatch No. 83 as final.

My conversation with the prince is set forth in the *précis* of it which I transmit herewith. I was prepared to enter upon a painstaking explanation of the matter, but was cut short by his peremptory declarations and manner, and it remained only to make such a statement in regard to them as should in reason arrest his attention, and to declare that my government would feel disappointment at the result.

The refusal of the prince to entertain my representations was so marked that it would have been possible for me to withdraw from the business until your further instructions should reach me. But as it happened, I had occasion to make some inquiries of the foreign office a few days after the interview, and I sent Mr. Holcombe to the ministers for the purpose, instructing him, however, not to mention the claims matters unless they should be brought up on the Chinese side, and then simply to say that I was surprised that our reasonable representations did not seem to them worthy of any attention whatever. The ministers present did bring up the subject, and in doing so they appeared anxious to declare that it is only because there is "no proof," that they resist the claims, and not at all because they purpose to dispute just obligations. In saying, again, that there are no proofs in support of the claims, the ministers were begging the whole issue. But inasmuch as they seemed to show a better spirit, I thought that it would be well to meet them at once with an offer to enter into the question of proofs. I accordingly requested Mr. Holcombe to go again to the ministers and to say that I was prepared and desirous to submit the evidence to them with all necessary explanations, but that it would be more convenient if they would delegate two of their number to deal with me, and would agree to submit the matters to arbitration in case we should fail to reach an agreement.

The ministers did not receive these proposals with favor. Indeed, I did not expect that they would. The difficulties attending such nego-

tiations here are not to be so easily surmounted. They were, however, fair proposals, and well calculated to help the business forward to a satisfactory result. It is a great task to argue a matter of an intricate character with a body of ministers who can be seen occasionally only, and who attend to their duties at the foreign office in turn, so that one has no certainty that those with whom he has spoken on one occasion will be present on another. The arbitration proposal was brought forward, however, as a means only to the end. To refuse to arbitrate would put them in an awkward position. I could use the proposal, therefore, to exert a degree of pressure upon them; but, as I have said, the ministers did not meet either proposition with favor, and the business remained as it was at the end of my interview with the prince, saving only that in tone and manner the remarks made to Mr. Holcombe had been entirely pleasant, and that I had received through him assurances of the desire of the ministers to remove the questions from the arena of discussion.

I must say to you that Chinese ministers are full of protestations of this sort; that, in fact, they seem sometimes to think that an expression of a desire to arrange matters is equivalent to the actual accomplishment of the end. Their protestations have made it possible, however, if not necessary, for me to proceed with the business, and, after consideration, I have concluded to do this in the way of correspondence. I have prepared a letter accordingly, which I submit herewith. It deals more particularly with the "Ward claims," and is meant to indicate to the ministers that their statements that no proofs exist are not to be supported.

In case, by any chance, the Chinese consent to an arbitration, I shall ask instructions by telegraph. If no telegram reaches you before this letter, I beg leave to ask you to advise me whether I have authority to conduct the business in that way.

I have already pointed out that I need a further instruction in regard to the sum to be claimed in Mr. Hill's case.

Your approval of my course is respectfully requested.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 190.]

Mr. Seward to Prince Kung.

PEKING, *December* 7, 1876.

I have the honor to hand to your imperial highness herewith two memoranda, one in regard to the well-known Ward claims, the other in regard to a matter which has been more lately put before the foreign office, the Keor-Jeor case.

Having the instructions of my government to place these matters before your imperial highness, I desire to inform you that I prefer to do this at a personal interview.

I have already spoken of both matters to the ministers of the Yamen, and they have not treated them with that consideration which I had a right to expect. I shall therefore, in a separate note, ask your imperial highness to name a day when I may meet you, to learn what course you propose to take in regard to these matters.

I have, &c.,

GEORGE F. SEWARD.

THE WARD CLAIMS.

In the year 1861-'62 Woo, Taotai, was conducting military operations in the Kiangsu province. Ward, Burgevine, and other Americans, were employed by him, and many expenses were incurred. Ward was killed in battle, and Burgevine was dismissed. At

the date of the latter event sundry accounts were outstanding, which Woo agreed to pay, if arbitrators named by him and the undersigned should decide that they were just.

The arbitrators, after deliberation, stated that certain claims were good, but Woo declared that they had not acted with good judgment, and declined to pay a great part which they said he ought to pay. The claims then rejected by him are outstanding to this moment.

Successive American ministers have brought this business before the foreign office. The undersigned has also presented it. The claims unpaid amounted, January 20, 1864 to taels 13,681.46 and $7,703.25, and there is interest also due.

For the amount of the claim with interest, the undersigned has now the honor, under instructions from his government, to claim upon the Chinese Government, for whose benefit their accredited agent, Woo, incurred the debts in issue, and for which, in the opinion of the United States Government, they are responsible.

GEORGE F. SEWARD.

PEKING, *December* 7, 1876.

THE KEOR-JEOR CASE.

In the year 1862 Yang Takee, a Chinese official, who, with Woo, Taotai, was conducting military operations in the province of Kiangsu, chartered from Hill, an American citizen, a steamer called Keor-Jeor, which was used for military purposes until she was captured by the insurgents and lost to the government and to Hill. Hill endeavored from time to time to collect charter-money and indemnity, as provided in her charter, from Takee and from Woo, but was never successful. Finally, in 1874, he brought an action at Shanghai before Feng, Taotai, against the heirs of Takee, but the latter, against the evidence and justice, refused to award judgment in his favor.

The undersigned, having now received the instructions of his government, has to present this matter as a claim against the Government of China for whose benefit their accredited agent Takee incurred the liability, and for which, in the opinion of the United States, they are responsible.

The charter-money was for 3,000 taels a month.

The steamer was used fourteen months. The indemnity to be paid, in case of the loss of the vessel, was 12,000 taels. Interest will also be claimed since the date of the loss—August 1, 1863.

PEKING, *December* 7, 1876.

[Inclosure 2 in No. 190.]

Minute of an interview between Mr. Seward and Prince Kung, and the ministers of the foreign office generally, on the 14*th of December*, 1876.

Mr. Seward opened the business in hand by saying that the two matters of which he had to speak had been briefly stated in the memoranda sent to the Yamen in his letter of the 7th instant. They were old matters and not of great moment, but they were brought forward under the instructions of the Government at Washington and deserve attention accordingly. Mr. Seward was specially acquainted with them. They were, indeed, presented in their present form, as a result of the efforts which he made to settle them at Shanghai while he was acting there as the consul-general of the United States.

The arbitration to which the so-called "Ward claims" was submitted at Shanghai, was arranged between himself and Woo, then intendant of circuit and commandant of the "Ever-Victorious Army" (Ward's corps). He had had a seat on the bench with Shên and Feng, who had heard the trial of the claim presented by Mr. Hill against the heirs of Takee for the use of the steamer Keor-Jeor, and had prepared the minutes of the evidence and proceedings at the trial, which, after having been approved by the lawyers for the respective parties, had now been presented to the foreign office. Being thoroughly satisfied that the claims presented are just, and having the authority of his government to present them, he wished to invite the prince's serious consideration to them.

During the time that was occupied in putting this statement before the ministers several remarks were thrown in by the prince. One of these was to the effect that the matters were indeed old ones, and another that it was not necessary to speak of them as *two* matters; it was all one business. The first point advanced, however, to which it appeared desirable to respond was by Pao, who said that to bring these matters before the Yamen was like presenting an account; it should be supported by evidence. Mr. Seward responded, taking up the "Ward claims" first, that he held in his hand a

copy of his letter to Woo, stating the terms of an arbitration upon which they had agreed, and a copy of the translation of Woo's response, accepting and confirming this statement of their agreement. He held also the original awards made by the arbitrators appointed, Messrs. Hanbury and Cunningham, and an original letter from Woo, in Chinese, bearing his official seal as intendant and commandant, in which he recapitulates the awards, and declares that he cannot pay certain amounts which have been awarded. In presenting the latter paper, Mr. Seward opened it before the prince, so that he might see the seal of the intendant, and asked whether he would examine it. To this the prince replied, with a brusqueness which he sometimes exhibits, "Woo said he would not pay, did he? Well, then, even more, we will not pay."

To this Mr. Seward responded, "This is the issue; it is not the first time that an officer has refused to do right. Am I to understand you to make the statement, without an adequate examination into the facts, and without an offer to make such examination, that you will not pay liabilities incurred in your behalf by one of your officers simply because he has said that he would not pay?" To this the prince replied, "We do not owe you anything." This was said in such manner as to preclude further discussion.

Mr. Seward then proceeded to speak of the Hill-Takee matter, asking whether a report had been received from the viceroy at Tien-Tsin in answer to the questions which Mr. Seward had asked to have put to him in his letter of October 26. The ministers responded that no answers had been received. Mr. Seward expressed surprise at this, as the viceroy is within a hundred miles of the capital.

The prince said that although the viceroy was at Tien-Tsin, the claim had arisen at Shanghai, and that the viceroy might need to send an officer to Shanghai to make inquiries, and that this would consume time. Mr. Seward then said that the claim does not depend upon the report which the viceroy may make; that full evidence has already been advanced in a regular way. What was expected was that the report of the viceroy would expose to him the utter mendacity of the native witnesses summoned at Shanghai. But in fact Mr. Seward held in his hand testimony from the viceroy, a letter written by him on the 4th day of August, 1863, as governor of Kiangsu, and bearing his great seal, to Mr. Seward as consul-general at Shanghai, stating that the Chinese steamer Keor-Jeor had been captured and carried to the insurgents on the 1st day of August, 1863, and that certain foreigners were implicated. In this letter the governor mentions that the vessel had gone from Shanghai to Sung Kiang, where she was captured, for purposes of the military service. Yet the native witnesses produced at the trial at Shanghai declared that although they were familiar with the steamers used for military purposes at the time at Shanghai, they did not know the steamer Keor-Jeor. In the same way the intendant at Shanghai, in transmitting the case to the viceroy at Nanking, said that "there is no certain evidence in support of the claim," and, again, "No evidence appeared that the Ward corps had used this vessel."

Still, again, the viceroy at Nanking had indorsed the language of the intendant, saying: "Since Hill can produce no evidence, it becomes more credible that Yang Takee never used his steamer." And even the foreign office had declared that as the charter party had been lost, no other evidence of the use of the steamer could be admitted. All this was stated in face of the fact that at Shanghai the defendant's lawyers had admitted that the steamer was used, and in face of a great mass of unimpeached testimony. But, fortunately, he was able to show to them the declaration of the governor at Soochow, now viceroy at Tien-Tsin, that there was a steamer Keor-Jeor, that she was known to him as a Chinese steamer, that she was used for military purposes, and that she was captured, as alleged by the claimant. It was known from what country the steamer came, who imported her, from whom the claimant purchased her, and how she came to be, for the time in virtue of the charter, a Chinese steamer. The whole case on behalf of the claimant is a clear one.

The only response made to these remarks was by the prince, who said, with an indifferent manner, that the viceroy would be again asked to report.

Mr. Seward then said that it must now be understood clearly, as he had stated in the memoranda sent with his letter of the 7th instant, that for the future the "Ward claims" and the "Hill-Takee claims" would be held as good against the government. The obligations had been incurred by Chinese officials for the benefit of the government, and the government had received the benefit. Looking to these facts, the government at Washington has sent to him the instruction to deal with the matter in this way. He then added that on a previous occasion, with an earnest desire to avoid an unpleasant discussion, and in a spirit of perfect fairness, he had suggested the submission of the two questions to arbitration here, although he had not the authority of his government for this proposal. To this the prince responded in a brusque way, "It is our matter. If we cannot attend to our own business, how can we get any one else to attend to it for us?"

Mr. Seward then said that he regretted the disposition shown by the prince and the ministers. His government had given many proofs of their friendliness to China. But

the treatment of questions as they arise will afford the test of what they may expect from China. He felt that the results of to-day's representations would occasion much disappointment at Washington. He hoped that the ministers would come to see that these questions affect their dignity and reputation far more than they do ours, and that they will come forward of their own motion to remove them from the arena of discussion.

To all of which the prince and the ministers, recognizing that Mr. Seward had said all that he cared to advance, responded by raising their wine-glasses, a ceremony usual at the close of an interview.

GEORGE F. SEWARD.

PEKING, *December* 16, 1876.

[Inclosure 3 in No. 190.]

Mr. Seward to Prince Kung.

JANUARY 8, 1877.

SIR: On the 7th of last month I had the honor to transmit to your imperial highness two memoranda—one upon the Ward claims and the other upon the Keor-Jeor matter. Upon the 14th of the month I met your imperial highness and several of the ministers of the foreign office, and had a conversation in regard to the same matters.

The statements of your opinions as then given were so entirely at variance with the views of my government, and were so positively expressed, that I saw no course open to me but to report to my government and await its further instructions. Mr. Holcombe happened, however, to be at the foreign office on the 21st December, and was told by the ministers that their desire was to meet all just claims.

I, accordingly, upon the second day afterward, through Mr. Holcombe, submitted a proposal to the ministers to enter upon a further discussion of the two matters, and to refer them to arbitration in case of our failure to reach an agreement. In order that the discussion might proceed in a more convenient way, I suggested at the same time that two of the ministers should be delegated to deal with me. Neither of these proposals received favor.

Believing, as I do, that this government will not allow a few claims, which amount, altogether, to no considerable sum, to remain a source of irritation and dissatisfaction, and accepting the statement of the ministers that it is your desire to remove them from the arena of discussion, I now present to you a second memorandum on the Ward claims, to which I invite your attention and ask a response.

The ministers of the foreign office told Mr. Holcombe that a report on the Keor-Jeor matter had been requested from the viceroy, Li Hung Chang. As that officer is doubtless in daily communication with the government, I have expected from day to day to hear what he may have to say, as also to learn the further report of the viceroy at Nanking in response to the points raised in my letter to your imperial highness of the 26th of October last.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure to inclosure 3 in No. 190.]

Memorandum on the "Ward claims," No. 2.

The following memorandum will indicate the proofs which can be adduced in support of the several statements made in the memorandum submitted with the undersigned's dispatch of the 7th of December, 1876:

1st. In the years 1861–'62, Woo, Taotai, was conducting military operations in the province of Kiangsu.

This is a matter quite within the knowledge of the foreign office, and has never been disputed. The undersigned holds dispatches emanating from Woo, and bearing his seal as Taotai at Shanghai and commandant of the "ever-victorious army" (Ward's corps).

2d. Ward, Burgevine, and other Americans were employed by Woo. Ward was killed in battle and Burgevine was dismissed.

The undersigned holds dispatches from the foreign office which contain proof of these statements.

3d. At the date of Burgevine's dismissal, sundry accounts were outstanding, which Woo agreed to pay, if arbitrators, named by him and the undersigned, should agree that they were just.

To secure these claims Burgevine held the steamer Confucius. The undersigned required him to deliver it, as he had previously required him to deliver the steamers

Tah-Wah and Martin White. When taking this action, the undersigned made the first arbitration agreement with Woo, and he still holds the original Chinese copy of the document. It bears Woo's seal and sign-manual. A copy in Chinese is sent herewith. The result of this arbitration was not satisfactory either to Woo or to the undersigned, and it was set aside and a second arbitration agreed upon by mutual consent. The undersigned holds copies in English and Chinese of the original letter which he addressed to Woo, stating the terms of the second agreement, and a copy of the response made by Woo. They are dated, respectively, the 13th and the 18th of October, 1863. A copy of the Chinese part of the letter of the undersigned, above mentioned, and a copy of the Taotai's response, are inclosed herewith. The original papers were sent from Shanghai to this legation in 1864, and have been mislaid. The undersigned holds also an original note from Woo, dated October 19, in which he mentions having executed the document on the previous day. A copy is inclosed herewith.

4th. The arbitrators, Messrs. Cunningham and Hanbury, declared that certain claims were good, but Woo refused to pay a great part of what they said he ought to pay.

The undersigned holds the original awards made by the arbitrators, as follows:

(*a.*) In regard to the claims of the estate of General Ward upon Woo, and of Woo upon the estate, dated December 26, 1863.

(*b.*) In regard to general claims, and Benson's matters, dated January 18, 1864.

(*c.*) In regard to general claims (supplementary) dated January 20, 1864.

Translations of these documents are sent herewith.

The undersigned holds also an original dispatch from Woo, dated January 31, 1864, in which he recapitulates the awards made by the arbitrators, and states his refusal to pay certain claims. A copy of this letter is inclosed herewith.

5th. The rejected claims are still unpaid.

No pretense that they have been discharged has ever been set up.

6th. Successive ministers have brought the matter before the foreign office.

This is a matter of record in this legation and in the foreign office.

7th. The unpaid claims amounted on the 20th of January, 1864, to taels 13,681.46, and $7,703.25, upon which sums interest is due.

The undersigned incloses a statement of the amounts unpaid.

8th. The undersigned now asks payment under instructions from his government.

He is prepared to read his instructions to the members of the foreign office.

9th. This is asked from the Chinese Government because the debts were incurred by their agent, and for their benefit.

The undersigned has already stated that he holds evidence that Woo was the accredited agent of the government. The arbitrator's awards show that the debts incurred by him, and now claimed for, were incurred for military purposes, and for the benefit of the empire. In case it is desired to inspect the original documents of which copies are sent herein, they may be seen at this legation at any time, or the undersigned will send Mr. Holcombe with them to the foreign office.

GEORGE F. SEWARD.

PEKING, *January* 8, 1877.

No. 15.

Mr. Evarts to Mr. Seward.

No. 124.] DEPARTMENT OF STATE,
Washington, March 17, 1877.

SIR: I have to acknowledge the receipt of your dispatch No. 190, dated 9th January last. It relates to the "Ward" and "Keor-Jeor" claims and to the unsatisfactory result of your efforts to receive from the foreign office a settlement of them. Your presentation of these cases in your notes to the foreign office and in your interviews with the ministers is a clear and correct statement of the facts, and your course is approved by the department.

In your demand in the "Keor-Jeor" case for the full amount claimed by Mr. Hill, you were acting in accordance with the views of the department as expressed to you in instruction No. 96, dated 19th December, 1876, but which had not been received by you at the time your dispatch was written.

In reference to the proposition to arbitrate the claims I have to advise you that, in case the claimants and the Chinese authorities will consent to that mode of settlement, you are authorized to conduct the business in that way.

It is hoped that you will be successful in your earnest efforts to secure an early and satisfactory settlement of these matters.

I am, &c.,

WM. M. EVARTS.

No. 16.

Mr. Seward to Mr. Fish.

No. 204.] UNITED STATES LEGATION,
Peking, February 12, 1877. (Received April 30, 1877.)

SIR: On the 9th of last month I had the honor to inform you that I had had an interview with Prince Kung and the ministers of the foreign office in regard to the Ward claims and the Keor-Jeor matter; that I had made no sensible impression upon them in favor of our views; that afterward some advances were made on their side, but that they retreated in face of my movement to meet them, and that I had finally addressed to the prince a letter inclosing a memorandum on the Ward claims, but not touching the Keor-Jeor case, for reasons stated.

I have now to inclose to you the answer which I have received, and which, as you will remark, deals with both matters.

You will remark, also, that it betrays no indication on the part of the Chinese to yield to our representations, and will agree with me, I think, in declaring that the points which are advanced by them do not in any way weaken our case, but rather the contrary.

It was my wish to transmit whatever might come from the Chinese at once to you and to await your instructions, and in this way to avoid any appearance of undue warmth in the prosecution of the matter, and to impress the Chinese more strongly with the belief that I am no more than the mouth-piece of my government in the statements which I am advancing. It seemed desirable, however, in reviewing what they wrote, to state succinctly the fallacy of all the points advanced. I have done this as briefly as I could in a dispatch and memorandum, which I inclose.

In transmitting to you the papers which I have mentioned, I beg leave to say that the foreign office may address me again, and that it may be as well for you to let the matter rest until I again address you, sending their further statements, or otherwise.

I respectfully ask your approval for the action reported in this dispatch, and

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 204.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication in reply.

Upon the 26th of October last, I had the honor to receive a dispatch from your excellency, stating that, in the case of the steamer Keor-Jeor, the Viceroy Li, having at the time in question been the governor of Kiangsu, and having in consequence the con-

trol of "Ward corps," would know whether the steamer was employed or not, and requesting that inquiries be made of him; also, that Dr. Macartney actually saw this steamer seized and taken away by the rebels, and requesting that the southern superintendent of trade be instructed to call upon Dr. Macartney for a statement of what he knows in the matter.

Upon the 7th December last, I also had the honor to receive a communication from your excellency to the effect that you were in receipt of certain instructions from your government in the Ward claims and the case of Hill *vs.* Takee, &c., and inclosing a memorandum upon each. Those papers received the immediate and careful consideration of this office. A full report had already been received from the southern superintendent of trade upon these matters, which contained the statement asked for from Dr. Macartney. There was therefore no necessity for questioning him further.

In regard to the question whether the Viceroy Li had any knowledge of this business, he was inquired of, and I am now in receipt of the Viceroy's answer, which is to the effect that the entire accounts of the "Ward corps" were in the hands of the intendants, Woo and Yang (Takee); that although he, being the governor, had the disposition of the "Ward corps" as to its location under his control, he never inquired into the chartering of steamers, purchasing of its equipments, and similar matters. If there were accounts which ought to have been paid, Woo undoubtedly paid them at the time. On the other hand, since Hill did not settle his business with Woo personally at the time, but now, that Woo and Yang are dead, brings up his claim, having no charter-party, he cannot, on his mere word, exact payment; &c., &c.

At the moment of forwarding to Your Excellency this answer, I received your later dispatch in the Ward claims and the Keor-Jeor case, saying, that in view of the desire of the ministers to settle these cases, you forwarded therewith a statement of the proofs which you held, &c.

I beg leave to state that in the case of the steamer Keor-Jeor, and the claims of the various foreign firms which are embodied in the case of Ward and Benson, in the year 1870 Messrs. Fogg & Co. presented a claim against Woo, which the former minister, Mr. Low, represented to me, and an instruction was sent by this office to the southern superintendent of trade for a report. He replied that Benson was the accountant for Burgevine. Burgevine had mismanaged affairs, and Woo was desirous of recovering the moneys he had advanced to him. Benson had manufactured fraudulent accounts with foreign firms, with the intention of evading this restitution. All this this office represented to the late minister, Mr. Low. With regard to Your Excellency's several dispatches, I have made a further careful examination of the whole business, and have prepared a memorandum stating the grounds on which I find myself unable to order the payment of the claims, which I forward herewith for your inspection.

As to the statement contained in Your Excellency's memorandum that these sums are now claimed of the Chinese Government, I would remark that if reliable evidence is to be had, then the claims must be paid in some manner. But if there is no vestige of proof, then not only can the money not be claimed of this government, but neither can it be exacted from the heirs of Woo and Yang.

In the several accounts presented by the foreign firms it is declared that they were incurred by the Ward corps, and that the Ward corps used the steamer Keor-Jeor. Since Woo and Yang were intrusted with the management of military affairs of so extensive a nature as these, how could they do other than have regard for their own interests, and even if they were able to incur debts and avoid payment, they would certainly never dare to do it.

Your dispatch further quotes an expression by the ministers of their desire to settle these claims. This expression correctly represents the desire of the prince and the ministers, of which the repeated investigations heretofore made and the many dispatches are in evidence.

In the current year, because of your excellency's several letters, I have again exhaustively examined the case, and made inquiries of the Viceroy, Li. Since this office has desired to close up these cases, it has not objected to make diligent and thorough inquiry; the result of all these searching investigations being, however, that there is absolutely no proof.

In the midst of the difficulties attending the adjustment of this matter I am able to suggest a single path to a settlement. Ward was indebted to Woo in the sum of more than 300,000 taels. Benson owed Woo some seventy or eighty thousand. Woo repeatedly petitioned me to secure the payment of these sums; but I, because the matter was a small one and had been standing for several years, and having in mind the good relations existing between the two governments, was unwilling in these matters to weigh out pound for pound, as it were, the accounts on the two sides, lest a disagreement should be the result, and I thus replied to Mr. Low when he addressed me upon them.

Since now Your Excellency has repeatedly approached this office upon the subject of these claims, it is my desire to settle them upon the evidence. But as no evidence is produced, as a failure to settle up the business would not accord with Your Excellency's

wish, and as an exaction of the sums demanded would not be consistent with justice, hence the consideration of the case pro and con produces but one course of procedure.

If Your Excellency insists upon the payment of the sums as demanded, then I can only request you to secure the restitution of the moneys advanced by Woo to Ward and Benson. When Ward and Benson shall have made payment in full I will see to it that the claims presented by the various foreign firms and by Mr. Hill are liquidated.

This plan is not only just and calculated to avoid further discussion, but will produce a final disposition of the cases.

Peking, January 15, 1877.

To His Excellency GEORGE F. SEWARD, *&c., &c.*

[Inclosure to inclosure 1 in No. 204.]

WARD CLAIMS AND KEOR JEOR CASE.

Memorandum by Prince Kung in reply to Mr. Seward's dispatch of January 8, 1877.

1. The arbitrators when giving their decision state in the matter of the claims of Ward against Woo, and the counter-claims of Woo against Ward, no proofs of indebtedness are produced on either side. From this it can be seen that evidence is most essential, and that in the settlement of all money-claims between Chinese and foreigners it must be asked whether there are proofs of debt, and that in the enforcement of a claim the most absolute proof must be obtained.

2. In the matter of the claim of General Ward, the arbitrators decide that there is no evidence of debt. This is very true. But in regard to Ward's indebtedness to Woo, since there were receipts in English (which Woo stated he had shown to your excellency), and yet the arbitrators persisted in declaring that there were no proofs on either part, it cannot be considered strange that Woo should refuse to accept such a decision.

3. The arbitrators decided that in the matter of the acknowledgment of Ward to the receipt of 270,000 taels, there was no evidence as to whether this sum was received all at one time or during a course of years, whether it was expended in China or abroad, and whether it was used for his own private business, or for the Chinese Government. The several receipts given, first and last, by Ward, contained a plain statement that these notes were cashed by Dent and Company, and other firms at Shanghai, to the amount of 270,000 taels, and not all at one time, but at several different periods. They also contained the statement that certain sums were handed over to Henry Ward, who was to proceed to France, England, and other countries, to purchase various articles.

From this it can be seen that these sums were used abroad. It was further stated that steamers, arms, and war materials were to be purchased, and that when the steamers and arms were delivered a detailed account would be rendered. From this it appears that these sums were to be expended for the government. But as, subsequent to the death of General Ward, his brother failed to deliver either steamers or arms, the moneys must be held as having been applied to his own uses. Thus the whole circumstances are accessible as evidence. But the arbitrators declared that there was no evidence which could be gotten at. There were the receipts; yet the arbitrators say there was only Ward's dying statement.

In your excellency's dispatch to Woo you said, "These two men (the arbitrators) can be relied upon as upright"; to which Woo replied, "The plan which you have submitted for settling these accounts seems to be fair." In view, now, of these declarations of the arbitrators, were they honest or dishonest?

4. The sums claimed by the foreign firms are very large, and it would appear either that the money was paid at the time or that there was some security. How could they be willing to trust persons just as they desired? Further, the accounts as presented are not clear, in that they fail to declare what person incurred each item, and the date of the transaction; and in many instances they have written that the articles were lost in certain places. How, then, can they be held as reliable accounts? Hence Woo asserts that they are fraudulent. Further, your excellency, while at Shanghai, said, "I have personally examined these accounts, and find some which I cannot accept." Since, therefore, there are in these foreign claims those which are fraudulent and invalid, how can payment of them be exacted?

5. Hill delivered over the charter-party of his steamer and other papers to Lewis, to be kept in the safe, requesting him to deliver the charter-party only upon his written order. Kept with such care it ought not to have been lost. If lost, there certainly should have been a date, place, and a reason for its loss. He ought to explain these things, point by point; instead, Hill merely says, "I don't know how it was lost."

What reason is there in this? Still further, since where the evidences are actually lost no payment can be exacted—if no evidences ever existed, and still payment may be enforced—then in all cases where no evidences of debt ever existed, it will be falsely claimed that the proofs were lost.

6. At the first settlement of accounts the charter-money for the steamer Keor Jeor was reckoned for four months; now ten months are added. Formerly the money was claimed of Woo, and now of Yang Takee.

Formerly it was to be paid to Russell & Co., but now to Mr. Hill. A matter thus changeable, now large and now small, now to this and then to that, is evidently difficult of adjustment.

7. In the case of the steamer Keor Jeor, Mr. Hill in his testimony declares that at the time of the first arbitration, Yang being still alive, "he went with me (Hill) and in person requested Jenkins and Rodgers to arbitrate upon this steamer, and that there were also other claims which Takee requested them to decide," &c. Since then the arbitrators were privately requested to pass other claims, was this honest or otherwise? It seems evident that Hill and Takee had a private understanding about these accounts, and abundantly manifest that the arbitrators' award is untrustworthy.

8. Ashley and others testified that the Chinese employed a large number of steamers. All were chartered, and all for the Ward corps. How can it be that the charter-money of all the others was paid, while that of the Keor Jeor alone was not handed over?

This seems hard to reconcile with one's ideas of reason. Further, since a bill of sale was executed, money must have been paid. If no money was paid, how could a bill of sale have been executed?

The grounds for suspicion are too numerous, and cannot be explained away.

9. Jonas Howgate testified that the Keor Jeor was damaged by shell, and that a Chinese official named Chang raised and repaired her and took her to Nanking.

J. F. MacLaughlin deposed that the Keor Jeor was carried off by rebels, and that he was sent on the Confucius in pursuit, but failed to overtake her. After all, was she destroyed by shell, or was she captured by rebels? Not only are the two testimonies mutually inconsistent, but both differ greatly from the declaration of the plaintiff. How can the case be decided on such testimony?

10. Hill testified that after the death of Takee he had requested Matthew Yates, an interpreter, to visit Takee's family, and to apply in person to his widow; that she, reaching out her hand, said, "Produce the charter-party, and I will pay principal and interest," &c., &c. The counsel for the defendant asked a question of Hill, who responded, "The first time I applied to Takee's widow for payment she did not ask to see the charter-party," &c., &c.

Not only is all this inconsistent with the evidence of other witnesses, but the first and last statements of Hill are not consistent each with the other, and it is hence the more difficult to receive it as true.

11. The expenses of the "Ward Corps" were paid monthly without the least omission. The 3,000 taels monthly charter-money of the Keor Jeor should also have been paid each month. If there had occasionally been a little delay there could not have been a bill running for fourteen months of which no part had been paid.

Further, since, at the time of the employing this vessel, the charter-money was not paid to Hill, and therefore he wanted to detain her, when thereafter the vessel was raised and repaired, her cost still not having been paid over to him, why did he not retake possession of his steamer?

It would seem that, neither to pay Hill his money nor return him his steamer, that Takee could not have done so wrong a deed, and on the other hand, that Hill having received neither money nor steamer ought not to have been so forbearing.

[Inclosure 2 in No. 204.]

Mr. Seward to Prince Kung.

FEBRUARY 5, 1877.

SIR: I have had the honer to receive your imperial highness' dispatch of the 15th ultimo, in regard to the Ward claims and the Keor Jeor matter. With your dispatch you have sent me a memorandum.

I now transmit to you in rejoinder to the points raised in the memorandum, two memoranda, one dealing with your objections to the Ward claims, the other with those raised by you in regard to the Keor Jeor case.

It has pleased your imperial highness to state in the dispatch under reply that Dr. Macartney's evidence has been received. I beg leave to call your attention to the fact that it has not been communicated to me, and to ask you to transmit it to me at your convenience.

You have also informed me that the statement of the Viceroy Li Hung Chang has been received, and given its purport.

He says that it was the business of Woo and Takee to charter steamers to be used in connection with the Ward force and that if they chartered the Keor Jeor they doubtless paid for her.

Your imperial highness will remark that the Viceroy's statement, so far as it goes, confirms the evidence which I have placed before you. His presumption that the steamer must have been paid for, is not, however, in the nature of evidence, and is disproved by the facts which have been placed before you.

Your imperial highness has been pleased to remark that General Ward and Benson owed large sums of money to Woo, and to say that when these are paid you will see to it that the amounts due to the foreign merchants, known as the Ward claims, and Mr. Hill's claim for the use of the Keor Jeor shall be discharged.

Your imperial highness will allow me to remark that your position is a singular one. It has not been customary, I think, to refuse to discharge a debt to one individual because another individual has not discharged his debts. I must respectfully submit that such a proposal does not serve to advance the settlement of the affairs which I have been obliged to place before your imperial highness.

I may say in regard to the alleged debts of Ward's heirs and of Benson, that these questions were submitted to the arbitrators Cunningham and Hanbury, and that they found no evidence of debt on the part of either.

Nevertheless, if your imperial highness has a different opinion it is entirely open to you to pursue them in the courts, and if you fail to secure justice, to represent the facts to my government through the legation which you are proposing to establish at Washington.

I beg leave in conclusion to ask your imperial highness to consider what is written in this dispatch and its inclosures, and to transmit to me an acknowledgment of its receipt, with such remarks, if any, as you may think it necessary to offer, in order that I may present the matter to my government for instructions.

In doing this, I shall be careful to present the whole correspondence so that it may be understood upon what grounds your imperial highness has found it necessary to refuse the relief which has been sought from you.

I need hardly say that I am now, as I always have been, ready to submit all the matters in controversy to the arbitration of disinterested persons. I believe that I can offer to you, if this be necessary, no more perfect proof of the just disposition which my government is always disposed to observe in its dealings with the government of this empire.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 to inclosure 2 in No. 204.]

Memorandum on Prince Kung's memorandum of January 15.

In regard to the Ward claims the following rejoinder to the prince's statement is offered:

I. To the remarks in paragraph I, that absolute proof must be produced when money-claims are being presented. It is the functions of officers concerned in the determination of such matters to decide what evidence is trustworthy and what is not trustworthy.

The undersigned considers the proofs which have been submitted in this business ample to substantiate the declarations which he has advanced, and he has given evidence of his sincerity by offering to submit the same to the arbitration of disinterested parties.

II. The remarks contained in paragraphs II and III relate to the alleged debts of Ward's heirs and of Benson to Woo Taotai.

As answer to these remarks is contained in the dispatch which covers this memorandum.

III. To the declarations that the claims passed by the arbitrators Cunningham and Hanbury were not good ones, and that the undersigned declared at Shanghai that some of them could not be supported by him. The undersigned has never advanced claims which he could not support. He did say at Shanghai that certain claims could not be supported, and refused to have anything to do with them.

As to objections against claims passed by the arbitrators, the undersigned must remark that the object of appointing the arbitrators was to place disputed matters before them for decision, and that the refusal to pay claims, and the refusal to abide by the decision of selected arbitrators, is not calculated to remove difficulties.

GEORGE F. SEWARD.

PEKING, *February* 5, 1877.

[Inclosure 2 to inclosure in No. 204.]

Memorandum on Prince Kung's memorandum of January 15.

The points advanced by him in the first four paragraphs relate to the Ward claims and have been dealt with separately. Those advanced in paragraphs V to XI relate to the Keor Jeor case, and are dealt with herein.

I. Touching the remarks in paragraph V, on the loss of the charter-party of the Keor Jeor, and in regard to evidence, the undersigned has to remark that the loss of documents is not an unheard of thing, and that it is not always possible to state the occasion and date of the loss. The undersigned has to remark further, that to refuse to receive evidence of the existence and contents of a document which has been lost, purloined, or destroyed, is not consistent with the course of legal procedure in western countries, and may be held to amount here, perhaps, to denial of justice.

The undersigned has still further to remark, that the proposition that documentary evidence, that is to say, as the undersigned understands the meaning of the prince, a written acknowledgment of responsibility is not always to be procured; as, for instance, when property has been procured upon a false pretense, when the loss of insured property is to be established, and when damages are sought for the wrongs or mistakes of another. So, in the whole range of criminal law, it is idle to expect that offenders will make written statements of their purpose to commit crimes, or of the fact that they have done so.

The undersigned has to remark still further that in this case his countryman would be entitled to belief if no charter-party had been made. It is clearly proven that he owned the steamer; that she was used for military purposes by your officers in the province of Kiangsu; that she was captured when in such use, and that he has never received compensation for either the use of the vessel or for her loss. Is it likely that she would have been given over for such use, in the absence of a written contract? Is the question of a contract, after all, more than one link in the chain of evidence?

II. That at one time charter-money was claimed for four months and again for fourteen, once by Hill and again by Russell & Co., and once from Woo and again from Takee. An inspection of the evidence which the undersigned has had the honor to place before his imperial highness would have shown the latter that when the claim for four months' use of the steamer was put forward she had been in use for only that length of time, and that she was subsequently used for ten months.

Messrs. Russell & Co. have never claimed on account of the steamer. The error in this respect may be one of translation of names into Chinese. Mr. Hill, as the evidence shows, belonged to the firm of Hunt & Co., and the error may have originated in this way.

The reasons why Hill applied to Woo are fully stated in the evidence. Moreover, the Viceroy Li Hung Chang says, as all the world knew, that Woo had to do with military expenditures at Shanghai.

III. Touching Hill's evidence that Takee asked the first arbitrators (Rodgers and Jenkins) to pass upon the Keor Jeor claim, and the inference that Hill and Takee were in collusion and the arbitrators untrustworthy. (See paragraph VII.) The evidence would seem rather to indicate distrust of Woo on the part of Takee. But if upon a mere presumption of this sort a serious question as to Takee's honesty is raised, why is his persistent failure to discharge the debts to Hill justified? Is he to be believed when his evidence tends against my countryman, and to be distrusted when it is in his favor?

IV. That other steamers were chartered and paid for, and that as a bill of sale of the Keor Jeor was executed, money must have been paid upon it. (See paragraph VIII.) The undersigned has never raised a question that certain other vessels were chartered and paid for, but this is no proof that the Keor Jeor was paid for. It is a presumption only, and it is contradicted by the plainest and most direct evidence, no part of which has been shown to be defective.

In regard to the bill of sale, it is to be said that the preparation of such documents is one thing, their delivery another, and that the consideration or price of a thing is not paid generally until the delivery takes place. It has not been shown or asserted that the bill of sale was delivered to Takee.

V. Touching a supposed conflict of evidence between the witnesses Howgate and McLaughlin. (Paragraph IX.) An inspection of the evidence will show that McLaughlin is speaking in the part referred to of the capture of the steamer, and Howgate of her subsequent recovery.

VI. Touching an alleged conflict in the evidence given at different times by Hill to the effect that after Takee's death his widow responded to Mr. Yates, an interpreter, that she would pay upon the production of the charter-party, and that when Mr. Hill asked her to make payment she said nothing about the charter-party. (Paragraph X.) There is nothing in the evidence to indicate that Mr. Hill did not apply to the widow before Mr. Yates went to her on his behalf, and consequently no conflict in the statements of Mr. Hill to which attention is called.

VII. Touching the remarks that the expenses of the Ward corps were paid each month, and that, as the steamer was recaptured, she could have been reclaimed by Mr. Hill. (Paragraph XI.) That the expenses of the Ward corps were *not* all paid month by month will be evident from the fact that Woo twice submitted outstanding claims of greater or less age to arbitration, and paid some of the claims after the second arbitration. Proofs of these facts have been cited by the undersigned. As the steamer was recovered from the insurgents after she had been sunk in action, it was the part of the provincial officers to tender her back to Mr. Hill if they wished him to receive her, and to pay what was due for her use and a reasonable sum for the damages sustained. The provincial officers doubtless know what finally became of her, and may still make a tender to return her upon the terms stated. It is not to be supposed that your imperial highness would expect him to receive the vessel back upon any other terms.

GEORGE F. SEWARD.

PEKING, *February* 5, 1877.

No. 17.

Mr. Seward to Mr. Fish.

No. 215.] LEGATION OF THE UNITED STATES,
Peking, March 6, 1877. (Rec'd April 30.)

SIR: I have had the honor to receive your instruction No. 96, regarding the claim of Mr. C. E. Hill upon the Chinese Government.

On the 12th ultimo I transmitted to you a letter which I had addressed to the Prince on the same matter. As I have not received a response, I have made haste to place before him the fact that I have a further instruction from you, and to enforce upon him the need of an early settlement of the business. I enclose a copy of my note.

You will observe that I have transmitted with it two of the affidavits received with your dispatch—those of Mr. Nichols and Mr. Rodgers. Those are direct and pertinent, and will add weight if this be possible to our previous representations. The affidavits of Mr. Lewis and Mr. Benson would serve, I think, no purpose, and might suggest to the ministers some quibbling points which might as well be avoided. They remain in my hands, and can be used hereafter if the occasion should arise. Having felt it desirable to address the foreign office before receiving a response to my dispatch mentioned above, I have not had time to consider further the question of the measure of Mr. Hill's claim, and in my present letter I seek to commit them only to an acknowledgment of responsibility, leaving the sum to be decided upon hereafter. I will go into this part of the case as soon as I have the opportunity, and advise you of my conclusion and the grounds upon which it is based. I have been disposed, as you are aware, to accept Mr. Hill's view of his right to claim for the full sum stated in his petition with interest at an equitable rate.

I remark that your instruction is silent as to the wisdom of my having suggested an arbitration. I have, of course, been more or less perfectly aware of the general considerations which are involved; the questions of dignity; of the rights of claimants, &c., which should be kept in view.

But, necessarily, the course determined upon must be taken in face of special considerations also. I cannot overlook the fact that my long connection with the matter in hand while I was in office at Shanghai; the failure of my predecessors to deal with the "Ward claims" in a vigorous way; the inability of the Chinese to estimate the merit of evidence adduced by us, owing to their lack of experience with our people, and to the distrust with which they view the declarations of their own, all conspire to make it difficult for them to reach a decision which will re-

quire the payment of considerable sums of money, and must be explained to, and defended before, the appropriate board.

This government is somewhat used to being driven to the wall roughly (not that they do not deserve such treatment often), and I have a desire to so stand before them that I can speak with the utmost plainness, and yet be free from any appearance of a desire to secure from them more than can be asked in strict justice.

Rightly handled, moreover, the business will not weaken my general position here, and my opportunities to obtain success in the negotiations of one sort and another which I am called upon to conduct.

Inconsiderately dealt with it might, on the other hand, almost paralyze my opportunities in the larger matters committed to me.

I may say, however, that I have used, of late at least, the arbitration proposal to exert pressure rather than with an idea that the Chinese would accept it.

They cannot gainsay our fairness in making it. On the other hand, they have an extreme dislike to submit questions to arbitration. I am especially gratified, therefore, that you have not found it necessary to tie my hands in this respect.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 215.]

Mr. Seward to Prince Kung.

PEKING, *March* 5, 1877.

On the 14th of October last I had an interview with certain members of the foreign office, at which we spoke at some length of the claim of Mr. Hill for the use of his steamer, the Keor Jeor, by the provincial authorities of Kiangsu in 1862 and 1863.

On the 16th of the same month I reported to my government the result of this interview, and I have now received an instruction in response from the Secretary of State. By this instruction I am again authorized to say that the claim of Mr. Hill appears to be founded in justice, and directed to urge a speedy settlement.

While the proofs which have already been adduced, in the opinion of my government, do fully establish the claim of Mr. Hill, I think it well to place before you the depositions of two witnesses, Mr. Nichols and Mr. Rodgers.

The former purchased the steamer for Mr. Hill, and was cognizant of her charter to the authorities of Kiangsu, and of her use for military purposes. The latter was one of the arbitrators appointed by Taotai Woo and myself in the early part of 1863. He declares that the charter-party of the steamer was laid before him and his associate, and that upon this evidence, and proofs of the use of the steamer, an award was made in favor of the claimant.

The matter of the claims and the demands of various merchants known as the Ward claims have now formed the subject of continuous discussion between this legation and the foreign office for more than half a year. No point has been advanced by your imperial highness, or the ministers associated with you, which has not been promptly and fully answered by me. Discussion can only have had the effect to dispel any doubts which you and they may have entertained, and have satisfied you that my government does not make any inconsiderate demands upon you. I am disposed, therefore, to insist with great earnestness that it is the duty of your government to remove this matter from the arena of discussion, and I hope to receive at an early moment an intimation to this effect.

Thereafter we can take up the question of the interest which should be allowed to the various claimants, and any other details which may need attention.

I have, &c.,

GEORGE F. SEWARD.

No. 18.

Mr. Seward to Mr. Evarts.

No. 234.] UNITED STATES LEGATION,
Peking, May 7, 1877. (Received June 18.)

SIR: On my return from the south, I found awaiting my attention a dispatch from the foreign office in regard to the claims of the merchants at Shanghai, known as the "Ward claims," and that of Mr. Hill, for the use of his steamer, during the military operations near Shanghai in 1862 and 1863.

Upon examining the dispatch in question, I judged that it would be expedient to respond to it, not so much because any of the issues raised on the Chinese side are of a serious nature, as to indicate our readiness to meet squarely any questions which they may bring forward, and, if possible, to force home upon them the conclusion that it is not desirable for them to trifle longer with our representations. I have done this in two dispatches, one of the 30th ultimo, dealing with the Ward claims, and one of the 7th instant, in which Mr. Hill's case is taken up.

I have used in these letters direct and unmistakable arguments and language, but no expressions which are stronger than the circumstances have called for. It has been somewhat difficult to speak with the required clearness and pertinency, and yet to keep within the strict bounds of courteous correspondence. An Asiatic is prone to misconstrue moderate expressions into an indication of weakness, but even so, I cannot but feel that our reliance should be the telling force of our facts and deductions rather than declamation.

It remains to be seen what will be the effect of my letters. There is perhaps one chance in fifty that a satisfactory response will be received. In such case it will remain to decide what are the exact amounts to be paid. In the other case it will become desirable to consider whether it will be consistent with our dignity to continue the parley, and what course we ought to take to secure the rights of our country people.

I have the honor, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 234.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication in reply:

Upon the 5th of February last I had the honor to receive a dispatch from your excellency discussing the Ward claims and the case of the steamer Keorjeor, and accompanied by certain memoranda.

These cases have remained unsettled for a great length of time, and, if it would be consistent with the principles of justice to order the payment of the sums claimed, I and my associates, the ministers, would not desire to discuss them further. But a careful examination shows that payment of them would be a violation of equity. I cannot, therefore, refrain from discussing in detail all the circumstances of these cases with your excellency.

Your excellency remarks that my request that the money claimed by Woo, Taotai, from Ward and Benson be paid, and that then I would order the payment in full of the Ward claims and the sum demanded by Hill, is a singular one. Let us see. Your excellency has requested the foreign office to collect for certain foreigners debts due them by Chinese. The foreign office, on the other hand, has requested your excellency to collect for certain Chinese debts due them by foreigners. The situations are identical. What is there peculiar about my remark? Your excellency's remark that in matters of account the only point is whether they ought or ought not to be paid,

is entirely correct. But your statement that "to refuse to discharge a debt due to one individual because another individual has not discharged his debts," &c. Your remark that the refusal is on this ground can hardly fail of misconstruction. Woo, Taotai, refuses to pay these accounts because he declares them all to be Mr. Benson's debts, and not at all because Ward and Benson have not paid him the sums due from them.

The request of the foreign office that your excellency would secure the sums due from Ward and Benson, and the assurance that thereafter it would repay the sums claimed by foreign merchants: this proposition was made because the sums demanded by the foreign firms and by Mr. Hill were absolutely without any evidence of their justice, and there was therefore no mode of enforcing their payment. Hence it was proposed that if those debts were paid, then the Ward claims, whether valid or not, should also be paid in full, as the family of the late Taotai could raise no objections.

Your excellency further remarks that the arbitrators, Cunningham and Hanbury, found no proof of debt, and so rejected the claims. The rejection of the claims of Woo by the arbitrators was because there was no proof of indebtedness; yet Woo, Taotai, once submitted to your excellency the stamped receipt which Ward had given him. How, then, could the arbitrators decide that there was no proof?

Referring to your excellency's statement that, in case my opinion is different from that formed by the arbitrators, it is entirely open to me to pursue Ward and Benson in the courts of the United States, I beg leave to reply that in the management by the foreign office of business concerning our two countries, if cases arise in which Chinese seek to recover debts due from foreigners, I can only address your excellency with a request for the recovery of the sums due, and cannot (have no intention) take proceeding in your courts.

With regard to my statement that the evidence sent forward by the southern superintendent of trade contained Dr. Macartney's statement, I did not mean his testimony, as personally given in the case, but his words, as reported in Howgate's testimony. I have the honor to forward a copy of his testimony herewith, and a memorandum in rejoinder to the several points in your excellency's memorandum, for your consideration.

At the moment of closing this dispatch I am in receipt of your excellency's communication in the case of the steamer Keorjeor, stating that you are authorized by your government to say that the claim of Mr. Hill appears to be founded in justice; that the various arguments advanced by me in the Ward claims have been fully answered by you; that the discussion must have had the effect to dispel any doubts which may have existed in my mind in regard to the case, and to cause me to see that your government makes no inconsiderate demands, &c., &c. You also forward copies of the depositions of Nichols and Rodgers.

These depositions are widely at variance with the testimony of the complainant and his witnesses in the case, and this office having received your excellency's two dispatches, and given careful attention and a fair hearing to the various arguments brought forward by your excellency, is still unable to regard Mr. Hill's claim as founded in justice, or that the claims of the foreign merchants furnish no grounds for suspicion.

Since I cannot have full faith in these claims, I forward herewith a memorandum covering my reasons.

Referring to the 11th point, when I shall have received replies from the northern and southern superintendents of trade to inquiries made of them, I shall then again have the honor of considering these cases with your excellency.

Peking, March 27, 1877.

Memorandum.

I. In the memorandum received it is stated to be the duty of the officers concerned to decide what evidence is trustworthy and what is not trustworthy, &c. This is very true. This office has held that in the collection of debts the proofs must first be secured. Upon presentation of these it can then be discussed as to which are reliable and which are not. But in the absence of any proofs, from what basis can reliability or unreliability be considered? When Woo, Taotai, produced for your excellency's examination the sealed receipt given him by Ward, you did not say that it was not trustworthy.

The claims of Hill and the foreign merchants are all devoid of proof, and how can any question as to validity or invalidity be raised?

The memorandum further states that your excellency considers the proofs furnished in evidence as ample, &c. But proof and evidence, each constitutes a class by itself. Proof is written documentary testimony. Evidence is the verbal testimony of men. An examination of the correspondence shows that aside from copies of dispatches sent, the only documentary evidence furnished is the agreement to arbitration drawn up between your excellency and Woo, Taotai. No bills of sale or vouchers for accounts have been furnished.

The agreement to arbitration drawn up by your excellency says that the two persons named as arbitrators are relied upon as being just. If not just, of course they should not be relied upon. And Woo, Taotai, in response to you, writes: "I suppose the plan for settling the accounts is fair." He does not say that, whether fair or unfair, he would abide by it.

Woo, Taotai, furnished a sealed receipt for the money in evidence of his claim, but the arbitrators wrongfully decided that it was not proof. Allow me to ask your excellency whether you are prepared to say that this was just.

In regard to the declaration of the arbitrators that the moneys received by Benson had not been applied to the payment of the bills now presented, the moneys received by Benson were for the Ward corps. The bills now presented are the bills for the Ward corps supplies, and they cannot but balance each other; but if they do not, why ought not the money to be claimed from him?

II and III. The memorandum states that an answer is to be found in the body of the dispatch, &c. It appears plainly from the second and third points in my previous memorandum that the arbitrators were not just in their decision.

The memorandum received does not maintain that they were clear of any injustice. Your excellency is requested to examine the previous memorandum, where you will be able to discover the reason why this office cannot order the payment of the claims.

If it be said that in case I am of different opinion from the arbitrators, I can pursue Messrs. Ward and Benson in the United States courts, this point has been answered in the body of this dispatch, and need not be referred to here.

IV. The Und memorandum received, states that "the undersigned has never advanced claims which he could not support," &c.

This office, in its former memorandum, stated that your excellency had examined these accounts, and found some which you could not accept, with no reference to your presenting these claims, but as a step in showing that this class of accounts is unreliable. If the Ward claims were each valid how could your excellency decline to accept them? Those rejected by your excellency were all fraudulent and need not be considered. This office has considered with great care those accepted by your excellency and cannot believe them to be genuine. The first half of the former memorandum states plainly the objections, and to it I request your further attention.

In reply to the remark that the object of choosing arbitrators was to place disputed matters before them for their decision, but that the refusal to pay by their decision, &c., I beg leave to remark that at the time of arbitration this office had no information regarding this case. It now having been brought here it becomes my duty to search out the truth, and consider the case on its merits. How can I consider the decision of the arbitrators as final?

V. The memorandum received states, that in the loss of documents it is not always possible to state the occasion and date of the loss, &c.

In the loss of articles of any sort there must be a date, place, and reason for such loss, as, for example, lost by theft, destroyed by fire or water, or lost on a journey. How can losses occur without either time, place, or cause? As to being able to find them again, that is not certain. But in matters of account, if proofs are lost no case can be made, because of the danger that in cases where no proofs ever existed an excuse of documents lost might be set up.

It is further stated that to refuse to decide the case according to verbal testimony is not consistent with the course of legal procedure in Western countries, and may be held to amount here, perhaps, to a denial of justice.

The decision of cases must of course be on the evidence produced, but in the present instance the plaintiff and his witnesses depose that there was a charter-party, while defendants and their witnesses swear that the steamer was never chartered. How can it be asserted that the evidence of the plaintiff is all true, and that of the defendants all false? This office, in seeking to discover the existence or non-existence of a charter-party, has sought only a just way of settlement.

It is still further held that documentary evidence is not always obtainable, as, for instance, when property has been obtained upon false pretenses, &c., that it is idle to expect that offenders will make written statement of their intention to commit crime. In this case, even if Mr. Hill had made no charter-party, the evidence is such that he would be entitled to belief, &c.

In mercantile transactions involving large amounts, and long periods of time, who is willing to give credit on mere verbal assurances? In case of false pretenses or counterfeiting, there still must be either the counterfeit or the fraudulent purchase. Without these there could be no case. In a case of goods bought with a counterfeit bill, if the seller of the article could not discriminate between a true and a false bill, he alone must suffer the loss; and certainly no case could be made against the bank whose bill had been counterfeited.

To take another example, in an uprising against a sect, and the destruction of its building, there of course could be no written evidence of an intent to quarrel between the populace and a sect.

But money transactions are of a different class. In them documentary evidence alone can be regarded as proof. If Hill actually executed a charter-party, then he cannot pretend ignorance as to the circumstances of its loss. If he never executed one, then his testimony and that of his witnesses is false.

VI. It is further stated that when the claim for four months' use was presented that the steamer had been used but four months; thereafter it was used ten months more, &c.

The arbitrators decided in the case of the steamer Keorjeor that the four months' charter-money claimed should not be allowed. If, as is claimed, the arbitration was held at the time the steamer was in use, and the arbitrators decided that his claim ought not to be paid, how could Hill still allow her use and be willing to charter her on credit for ten months longer?

In regard to what is said about first claiming the money from Woo, Taotai, and afterward from Yang Takee, if the money was due from Takee, then its demand from Woo was a mistake. If it was due from Woo, then the claiming it from Takee is wrong. In regard to mistake made by this office in a former dispatch in writing Russell & Co. for Hunt & Co., I beg your excellency to correct the mistake.

VII. It is held that there is no evidence that Hill and Takee were in collusion. "But if there was collusion, why does the yamen sustain Takee in his refusal to discharge his debt? Is he to be believed when his evidence tends against my countryman and to be distrusted when it is in his favor?" &c.

Honesty may be said to be the absence of selfishness. If a pretense is made of a just settlement, and thereafter a private and selfish request is made, how can it be held that there was no collusion? This office has been unable to order Takee to pay this claim because Hill produced no documentary proof of debt, and not because of collusion on the part of Hill. The statement was made simply as indicating the character of the parties, for if they were in collusion they could not be worthy of belief.

In this case there is only Hill's deposition and none from Takee, so they can neither be said to agree or disagree. If the case contained Takee's testimony, then there could be talk about agreement, &c.

VIII. It is stated that the fact that Ward's corps chartered other ships and paid for them is no proof that the charter-money of the Keorjeor was paid; there is evidence that the charter-money was not paid at the time, &c.

In cases of debt, where documentary evidence exists, the decision is easily reached. Without this evidence there must be a consideration of similar transactions and a study of the procedure in them. The remark made by this office, "how could it be that the hire of all the other steamers was paid and the hire of the Keorjeor alone left unpaid?" was intended as suggesting this sort of evidence, tending to show that there could hardly be such a state of facts, and not as a *proof* that the charter-money of the Keorjeor had been paid. The plaintiff and his witnesses state his side of the case. The defendants and their witnesses state theirs. There is no agreement between them. How can a decision be taken from such evidence?

IX. It is stated that McLaughlin in his evidence is speaking of the capture of the steamer, and Howgate of her subsequent recovery, &c.

Your excellency's mention of her "capture" is called "seizure" in the evidence, and your mention of her "recovery" is called "raising" (from the water) in the evidence. Her seizure was her capture by the rebels. She thus came into their hands and was no longer tied up to the river-bank. Hence the statement that she could not be overtaken. Her "raising"—this word is used of a vessel which has sunk, and hence could not move, being still at the river-bottom; hence the statement about "raising" her and taking her away. If she was actually *sunk* she could not be carried off, and why pursue her? If she was carried off she could not have been sunk, and why "raise" and "repair" her? If the raising and repairing refers to this steamer, then the failure to overtake does *not* refer to this steamer. The destruction and the carrying off are two irreconcilable matters. How can it be held that there is no conflict of evidence?

X. It is stated that Hill probably went first in person to collect of Takee's heirs his debt, and afterward requested Dr. Yates to go, &c.

This is your excellency's conjecture. According to Hill's testimony Takee was very ill, and could see no one; after Takee's death he requested Dr. Yates, who spoke Chinese, to go and see Takee's widow about the business. A study of this evidence gives the impression that prior to Hill's asking Dr. Yates to go and see Takee's family Hill himself had not gone there to claim his money. But whether he had been or had not gone, whether Takee's widow had seen him or had not seen him, of all this there is no proof.

XI. It is stated that there is abundant proof that the accounts of the Ward corps at the foreign shops were not all paid each month. If they had been paid, why should Woo, Taotai, agree to arbitration, and have paid some of the claims after the second arbitration? It is also stated that as the steamer was recovered from the insurgents after she had been sunk in action, and she was taken by a Chinese official after being repaired, to Nanking; and further, the provincial officers doubtless know where this steamer now is, and may return her to Hill, &c.

In the matter of the accounts of the "Ward corps" with foreigners, aside from the several items embraced in these cases, I have never heard of any which were not paid in full. Regarding these accounts, Woo, Taotai, agreed to submit them to arbitration, because they were continually demanded of him and he could not decline your request. When he consented he relied upon the arbitrators as just men, not at first imagining that they would be unfair. Afterwards being committed in the business, he paid a large proportion of the claims in order to close the affair, and not because he felt that they ought to be paid.

In regard to restoring the steamer to Hill, if a bill of sale was executed and the money not paid, the vessel is still Mr. Hill's property. After she was sunk, raised, and repaired, being still his ship, Hill ought to have demanded her return to him in all justice. What was there difficult about it? Regarding the present whereabouts of the steamer—Chinese steamers, whether bought, built, or confiscated, their history in each individual case can be determined. How could a vessel whose history was not clear be held? If, according to Howgate's testimony, the steamer is still in existence since steamers are continually going and coming before the sight of all men, if Hill can point out her whereabouts, then this case can be brought to a head, and can be easily disposed of.

In view of your excellency's remark on this point, I have directed the northern and southern superintendents of trade to make secret and open search, through their subordinates. On receipt of their reports I will refer to the subject again.

(Here follows Howgate's testimony.* See printed minutes of case as tried at Shanghai.)

[Inclosure 2 in No. 234.]

Mr. Seward to Prince Kung.

APRIL 30, 1877.

I have had the honor to receive the dispatch which your imperial highness addressed to me on the 27th ultimo in relation to the Ward claims and the Keorjeor case, and beg leave to make the following remarks in response.

1st. I observe with satisfaction that your imperial highness recognizes the fact that the claims of the various merchants now in question, called the "Ward claims," the claim of Woo, Taotai, against Mr. Benson, and the claims of the estate of Ward against Woo, and Woo against Ward's estate, were all submitted to arbitration, and that the terms of submission to arbitration are shown in the letter addressed by me as consul at Shanghai to Woo, intendant at Shanghai and commandant of the Ward corps, on the 13th of October, 1863, and in the response of that officer, dated the 18th of the same month. I think that this clearly appears from what is written in the body of your imperial highness's dispatch, as well as in the memorandum which accompanies it, and that it will not be possible to raise any question as to the fact hereafter.

2d. I am at a loss, however, to understand the remark of your imperial highness, contained in part I of the memorandum, to the effect that Woo did not say that he would abide by the order of the arbitrators if it should not be fairly made. Of what use can it be to arbitrate a matter if, after the award, either party can say, "It is not a fair award; I will not accept it." What Woo did agree to is clearly written in the letter of the 13th of October: "The object in view in this arbitration is the closing up of the whole business named, and it is therefore expressly agreed that what the arbitrators say shall be final and shall be binding on either party. The claims declared just by them shall be paid by the Taotai within fifteen days from the time that the decision is made."

These words were written by me, and I do not see how I could have made them clearer. They were written in full faith that an officer of your government would not disregard an agreement solemnly entered into. My reliance upon him was such reliance as my government would put in the plighted faith of your government if an arbitration should be arranged between us. Is it wise to consider good faith as a matter of so light concern that it may be put aside as one puts aside the garment which it is inconvenient to wear?

The merchant who disregards his bond is dishonored forever. Is an official less bound to keep his engagements?

3d. But upon what basis can an accusation be rested that the arbitrators did not act fairly?

There are more than thirty claims declared valid by the arbitrators, which the Taotai did not pay. These claims belonged to seventeen different firms and persons. In rejecting them Woo virtually declared that the people who advanced them did so

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* See inclosure 1 in paper No. 6, *ante*.

in bad faith. How low a standard does he then put on the good faith of others, and how great is his reliance upon himself, when he expects that his mere declaration of the bad faith of others will be accepted as conclusive of the fact.

Passing by the examination given these matters by myself, and my opinion upon their merits, it may be said again, when Woo implies that the arbitrators acted unfairly, he implies that the word of disinterested judges, previously declared to be just men, is of less account than his own. Here are seventeen claimants, all claiming in fraud, and two distinguished gentlemen, chosen as arbitrators, joining in with them to deal wrongfully with Woo. What a singular spectacle is thus presented! May I not say, in all candor, that it is time that Woo's pretenses in this direction should at last be set aside as simply incredible.

4th It is said, however, that the debts which are now urged upon your attention were those of Benson, the quartermaster-general of the Ward corps.

Upon referring to the letter of the 13th October, your imperial highness will find that all questions between Woo and Mr. Benson were submitted to arbitration in defined terms. The Taotai had frequently spoken to me of Benson's accounts, but had never proposed to enter a suit againt him in the consular court. I could very well have said to him that this would be the appropriate way to proceed, but, in view of what he was saying, and of his failure to pursue the matter before the court, I proposed, and Woo agreed, that the questions involved should go before the arbitrators. Upon these questions the arbitrators gave the following decision: "As regards Mr. Benson's accounts, we have decided that, although the receipts and documents produced were unsatisfactory and incomplete, the moneys received by him were expended on account of the Chinese Government, and were not used to discharge any of the claims now settled by us as due and owing."

This was the judgment of just men, called to act as arbitrators. How can it be said afterward that Benson should pay the claim in question? And if Woo was dissatisfied in regard to the use made by Benson of the moneys intrusted to him, it was still open to him to pursue him in the court. The submission to arbitration contains no provisions which would preclude him from doing this, but he never proposed such action. Having failed to enter suit against Benson, either before or after the arbitration, and in view of the decision of the arbitrators, how can a contention be advanced, now that Benson did not honestly discharge his duties, and how can the audacity of Woo be given countenance to?

5th. Still another excuse is advanced by Woo, that a large sum of money, to wit, 270,000 taels ($380,000), was due to him from the estate of Ward.

Here again I have to point out that the question involved was submitted to arbitration, and passed upon. Your imperial highness will find the reference of it to the arbitrators provided for in the 5th paragraph of the letter of the 13th of October. Their award was made on the 26th of December, 1863. I append a copy of it hereto.

There is no doubt that General Ward received money with which to buy steamers and munitions of war, neither is there any doubt that Woo held a Chinese paper, with a stamp upon it, which he said was Ward's receipt for 270,000 taels. He did show this paper to the arbitrators in my presence. But he entirely failed to show for what purpose this money was given to Ward. As it was well known that about 120,000 taels were given for the purchase of steamers, it was not singular that the arbitrators failed to rely upon it as evidence that 270,000 taels were given for the purpose.

It is within my own knowledge, and susceptible of proof, that a considerable part of the 120,000 taels given to Ward was expended in England for munitions of war, and that these were received in Shanghai by your authorities after the death of Ward. The steamers ordered in America were not completed, because the additional sum needed for the purpose and promised was never sent by Woo, and for the same reason there was no recourse but to sell them there. This was done, and full accounts were sent out, which were received after the arbitrators had completed their work. They showed that the money received in America from the sale of the steamers was only about half of the sum which General Ward, when mortally wounded in fighting the battles of China, said was due to him.

These are the facts in regard to the affairs of Woo and the estate of Ward. But they have nothing to do with the claims of the seventeen merchants. If Woo's estate owes the estate of Ward, or if Ward's estate owes the estate of Woo, or if there are accounts unsettled between the estate of Ward and your government, that is one matter, and what is due to the seventeen claimants is another matter. How can business go on if a debt due to one person be set aside because of a claim that some one else has not paid his debts to the person claimed against?

6th But while touching this matter of the Ward estate, I may as well point out to you that Woo himself was not anxious to go into the matters between him and the estate of Ward. Witness, first, what he says in his letter of the 18th of October: "In regard to the dues on the account which is strictly General Ward's, we have several times gone through with it, and it ought not to be brought up again. It is so tangled that it cannot be unravelled. Now that the consul again proposes to submit it to ar-

bitration, it is for the purpose of ending the case. According to justice and propriety, the account of Mr. Benson should be reckoned in connection with that of General Ward, and the dues on account of the former made available in settling the accounts of the latter."

This language would seem to imply that Woo did not care to go into the accounts with the estate because it might be shown that there was something due from him to the estate, a conclusion in which, as it would appear, he was entirely right.

7th. But this is not the only proof that Woo did not care to go into his matters with Ward's estate. In the latter part of the year 1864, I received from Ling, a former intendant at Shanghai, a letter in which he communicated to me instructions which he had received from your imperial highness through the governor at Soo Chow. I send to you herewith a copy of this letter. You will notice that the amount given to Ward for the purchase of steamers, &c., is always spoken of in this letter as 120,000 taels. In the closing part of the letter the governor expressly states that the accounts of Woo with Ward had been forwarded to the Yamen. How is it, then, that Woo states to your imperial highness on one occasion that 120,000 taels were given to Ward, and on another to me that 270,000 taels were paid to him? Woo evidently was a man who blew hot and cold as suited his purpose.

8th. While Woo's unreliable character and his unwillingness to enter upon the questions with Ward's estate are thus shown, there are still further proof.

On the 14th November, 1864, the official mentioned in the last section, Ting, Taotai, wrote me a letter, which I inclose. You will see from it that, as if speaking with the concurrence of Woo, he expresses satisfaction that I did not care to enter upon the matters of Ward's estate, and expressed appreciation of "my equitable decision." In this letter, moreover, although he speaks in it of what Woo says in regard to a part of the case, he speaks only of 120,000 taels as the amount given to Ward.

9th. I have entered into the questions raised in regard to the accounts of Benson and the estate of Ward, not because they have any relevancy to the claims of the seventeen merchants, but to indicate to you more forcibly how little reliance your imperial highness should place on the word of the former Taotai, and to make clear any obscurity. Having done this, I must repeat again that the claims of the seventeen merchants stand by themselves, and ought not to be confounded with the accounts of other people.

10th. The remarks made by your imperial highness in the letter under reply, in regard to the Keorjeor case, will be treated of in a separate communication.

11th. I desire to remark in conclusion, that it should be evident to your imperial highness that this business has been conducted on the side of the claimants, and of the Government of the United States, with much patience and forbearance, as well as with the single desire to secure the ends of justice. In what other way can be explained the long-drawn-out discussions at Shanghai, the reference to arbitration there, the long-continued discussion here, and the tender to again submit the questions to arbitration? The matters are very small ones, yet they involve the grave question whether it is possible to remove from the arena of discussion the issues of greater or less magnitude arising in the course of our relations. If there shall be failure in this instance it cannot be said, I think, that the fault is with us. And if there be failure in small matters, what can be expected in graver ones?

I have, &c., &c.,

GEORGE F. SEWARD.

[Inclosure 3 in No. 234.]

Mr. Seward to Prince Kung.

PEKING, *May* 7, 1877.

The dispatch and memorandum which your imperial highness addressed to me on the 27th March relative to the case of the 17 merchants at Shanghai who hold claims against the Chinese Government, and to the claim of Mr. Hill for the use of the steamer Keorjeor, in and near Shanghai, in the years 1862–'63, I have already sent for an answer to the points made by your imperial highness against the claims of the 17 merchants, and now recur to Mr. Hill's case.

I should be pleased to accept your imperial highness's statement that if the steamer in question can be found the case "may be brought to a head." I fail to see, however, that the finding of the vessel can advance the settlement, for the reason that the disused hull can tell no story of the past. Whether, then, the vessel in question was chartered from my countryman, and was used during the war in and about Shanghai, is a matter of evidence, and must be decided by the proofs documentary and parol which can be brought to bear upon it.

This statement brings me at once to the point which your imperial highness raises as to the credibility of the evidence advanced by the respective parties. You say,

'How can it be asserted that the evidence of the plaintiff is all true and that of the defendant all false?"

That the claim is not now urged against the defendant at Shanghai has already been clearly explained to you. It is to the Gov. rnment of the Empire to which, under my instructions, I address myself. But since it pleases your imperial highness to allude to the evidence taken in Shanghai, I may respond to you that the plaintiff's witnesses have not been in any way impeached, while those cited for the defense stand in an unsatisfactory position, inasmuch as they are at variance between themselves, and in part condemned by evidence which your imperial highness will not question.

There were three witnesses called for the defense—Jameson, a foreigner, and Foo E. Chow and Lu Wai San, Chinese. On reference to their evidence (pp. 48–51 of case) you will find the two latter, while claiming to know what steamers were used in connection with the Ward corps, did not know such a vessel as the Keorjeor.

Jameson (p. 47), on the contrary, not only remembered the ship, but knew that she was used for military purposes, and saw her just after her capture, while being carried away to the insurgents.

If a question be raised upon the credence of these witnesses, one cannot hesitate, I think, to say that that of Jameson is the more pertinent and accurate. He speaks positively and affirmatively, giving an account of his experience in connection with the vessel and her capture, while the others content themselves with declarations that they do not remember, &c. It is notable that the evidence of Jameson tallies entirely with that of the witnesses called for the prosecution, so that it may be said that the case of the prosecuti n is to this extent made out by the defense.

There is a witness for the claimant, however, who was not called at Shanghai. I mean the grand secretary Li, now viceroy at Tien-Tsin, who was governor at Kiangsu in 1862–'63. I send herewith his letter to me as consul-general at Shanghai, dated the of August, 1863, in which he reports the capture of the Keorjeor and her transfer to the insurgents. He speaks of her, as you will see, as the Chinese steamer Keorjeor, and states that she was at the time doing the service of the Imperial Government. This dispatch has already been exhibited to the members of the foreign office. If I am not mistaken, your imperial highness will regard this letter a complete rebuttal of the evidence of Foo E. Chow and Lu Wai San, so far as they speak to the existence and use of the vessel in question. And if their knowledge as to a fact which was patent to the eyes of all at Shanghai is so defective, why is their statement that Takee never chartered the vessel to be regarded?

I had the honor to hand to your imperial highness on the instant a letter which the high officer just mentioned, the then governor in Kiangsu, addressed to Ying, Tautai, in 1864, in regard to certain claims. You will find in it a statement that the accounts of Woo in connection with the Ward corps had been sent to the Foreign Office. In the dispatch which your imperial highness addressed to me on the 15th of January last, you quote that officer also as reporting to you lately that although he had control of the disposition of the Ward corps, he had nothing to do with the accounts; that these were in the hands of Woo and Takee.

Does it not occur to your imperial highness that the claim which I have presented to you in behalf of Mr. Hill, supported as it is by a great mass of testimony, leaves me free to express surprise that since the use and capture of a steamer claimed by him has been proven by the evidence of the viceroy, as well as in other ways, you have taken no pains to learn what the reports and accounts of Woo and Takee contain in reference to her? Where did they get her? Was she purchased or chartered? From whom did they purchase or charter? How much and in what way did they pay for her; or is it the fact that their reports made no mention of her? In such case, how can her use by the Ward corps be explained; and why did the viceroy write to me mentioning the vessel and her capture? It would seem clear that there was such a ship, and that she was used as the claimant states. It would seem not less clear that if his statements that he was the owner, and that he chartered her to Takee for government use are false, you have the means to prove the fact. Looking to the evidence which has been advanced on the claimant's side—evidence which the Government of the United States has deemed conclusive of the merits of his claim—the fact that your imperial highness has not been able to show from your records that his statements are unworthy of belief, must be held to indicate strongly that no evidence exists which can be made to tell against the claimant. Why then delay the settlement which we have so long urged upon you? Your imperial highness has much to say in the memorandum, under reply, of the nature of evidence, and the distinction between that which is documentary and the parol evidence of witnesses.

To speak with candor, there is but one conclusion to be taken from your words: Your experience teaches you that parol evidence is almost worthless. If this be true in your experience, then it may be held to follow that documentary evidence is also to be distrusted, since it often happens that parol evidence is needed to prove the execution of documents. But I may say to you, with no intention to give offense, that experience in western countries with regard to evidence does not tally with yours. It

is our habit, founded upon the conclusions of our experience, to rely upon the testimony of our witnesses, and we can but protest that you do not know the western character when you view with such abundant distrust the evidence of honorable men which has been put before you.

Your imperial highness, in the VI section of your memorandum, asks why, if the arbitrators decided that the claim of my countryman for four months' charter of his vessel was not good, he was willing to allow her use to go on for ten months longer.

In answer to this, it need only be pointed out, as the evidence clearly shows, that the arbitrators were dealing with claims against Woo, while this claim is against Takee, and that the case of the claimant was advanced before the arbitrators by me in ignorance of the facts; and that, furthermore, the arbitrators sat in the latter part of 1863 and the early part of 1864, while the vessel was captured and carried off in the middle of 1863. The most cursory study of the evidence should have made these facts patent to your imperial highness.

Your imperial highness speaks, in the IX section, of confusion in the evidence in regard to the capture of the steamer, her being raised, &c. It is understood that the vessel was sunk in some way while in the service of the insurgents. No witnesses have spoken of the fact, but it was a matter of general report. She was thereafter raised, and taken to Soochow and repaired. Of her presence at Soochow and subsequent use there are witnesses who speak, and no confusion can be attributed to the evidence on this account. All this has been already clearly explained to your imperial highness.

Your imperial highness has said that the depositions of Nichols and Rodgers are widely at variance with the testimony of the complainant and his witnesses. It is to be noticed that the points of divergence are not stated by you. It has not occurred to me that such divergence exists.

Having thus traversed all the points raised by your imperial highness, I beg leave to recall your attention to my dispatch of the 3d of March, in which I informed you that I was directed to urge a speedy settlement of this matter.

In doing this I beg leave to say that it seems to me that the question of your responsibility has been sufficiently discussed. I hope, therefore, to receive at an early moment your acknowledgment of the merit of our representations, and an expression of your willingness to discuss the question of the sum which should be paid to my countryman.

I take this occasion,

GEORGE F. SEWARD.

No. 19.

Mr. F. W. Seward to Mr. G. F. Seward.

No. 160.] DEPARTMENT OF STATE,
Washington, June 30, 1877.

SIR: I have to acknowledge the receipt of your dispatch, No. 234, dated 7th May, ultimo. It relates to the claims of the merchants of Shanghai, known as the "Ward claims," against the Chinese Government, and also the claim against that Government of Mr. Hill, for the use of his steamer during the military operations near Shanghai in 1862 and 1863.

Your note of the 30th April to Prince Kung in relation to the "Ward claims," and your note to him dated 7th May discussing the case of Mr. Hill, seem to be conclusive answers to the arguments advanced by Prince Kung, and it is hoped that your clear firm language will be effective for good in the councils of the Chinese authorities.

There is no occasion for any change or modification of the instructions heretofore given you by the Department.

I am, &c.,

F. W. SEWARD,
Acting Secretary.

No. 20.

Mr. Seward to Mr. Evarts.

No. 249.] UNITED STATES LEGATION,
Peking, May 17, 1877. (Received July 27.)

SIR: Recurring to your dispatch No. 124, I have now the honor to hand to you a note which I have addressed to the foreign office, declaring that my presentation of the "Ward" and "Keorjeor" claims has met your approval, and asking the prince to say, 1st, whether this government acknowledges responsibility; and, 2d, if not, whether they will accept the mediation or arbitration of the diplomatic body or any of its members.

I put the first question because I am satisfied that time enough has been given to the discussion to bring out all the material facts and considerations, and that the government are as well able to take a decision now as they ever will be.

I have put the second question in order to avoid the appearance of being urgent or arbitrary, to exercise a certain pressure, and yet to indicate the reliance we have on the merit of our representations.

It may occur to you that I should have secured your approval before putting these questions. I may say to this that all negotiations with the Chinese are dilatory in the extreme, and that, looking to the distance from Washington, it is necessary to assume responsibility sometimes, if one is to press matters to an adjustment in any reasonable period of time.

It may seem to you, moreover, that my course is calculated to force my own government somewhat. This is not the fact, however, as it seems to me. It is true that if the Chinese answer both my questions negatively it will be necessary to consider what course is to be taken. It will not be necessary, however, to decide upon stringent measures—reprisals, for instance. We can say to the Chinese simply that, while we are not satisfied with their action, we shall not at the moment continue the discussion. I am not prepared to say that I shall advise this course. I lean, on the contrary, to the opinion that a great degree of firmness is needed in dealing with this government, and that they would respect us the more if we stood firmly for our rights.

But, however that may be, it is not desirable to continue a representation of our case which has already been full and clear. It has been the part of patience to meet all that has been said by them carefully, courteously, and thoroughly, but it is not necessary to repeat our facts and arguments over and over again. It will not be dignified to do so. It will indeed be weak, and be so regarded by the Chinese.

Moreover, I have much to do besides dealing with the given matters, and I ought to be relieved from the responsibility in regard to them so soon as this can be done in justice to the interests concerned, lest my efforts in behalf of these special matters may lead me into an attitude before this government which will affect unfavorably my general influence. This is so manifestly true that I need not dwell upon the point, although it is of much consequence to me personally, and, as I hope, to the various interests which have been confided to me.

The foreign office is not likely to make an immediate answer to my note and to those which I have transmitted to you with my dispatch of the 7th instant. You may prefer, however, to defer your response to me until you have received what they may say.

Mr. Hill has authorized me to submit his case to arbitration. Other creditors are likely to take the same course, but I shall not communicate with them until I hear further from the foreign office.

I have the honor, &c.,

GEORGE F. SEWARD.

[Inclosure in No. 249.]

Mr. Seward to Prince Kung.

PEKING, *May* 14, 1877.

SIR: On the 9th day of January last I transmitted to Washington a dispatch covering the correspondence which had taken place between us just prior to that date in regard to the claims of the seventeen merchants and the Keorjeor case, and I have now received in reply an instruction, dated the 17th of March, in which the following language is used: "Your presentation of these cases, in your notes to the foreign office and in your interviews with the ministers, is a clear and correct statement of the facts, and your course is approved."

I have sought to exhibit in this business judicial fairness, as well as a painstaking disposition. Your imperial highness and your associates of the foreign office will bear witness that I have not failed in the latter respect, and you cannot, I think, question that a sense of strict justice has underlain our representations, in view of the proofs which we have placed before you, and, above all, in face of the repeated expression of our willingness to submit the issues involved to the mediation or arbitration of disinterested and just friends.

It would appear, at any rate, as if the time has come when we may ask for a positive answer to our proposals. It is nearly a year since we began our conversation and discussion of the cases, and they were "old matters," as your imperial highness remarked, when we took them up. Why should there be further delay?

I beg leave, therefore, to ask very respectfully—

1st. Is your imperial highness prepared to acknowledge your responsibility to the seventeen merchants and to Mr. Hill, and to begin with me the consideration of the exact sums which are to be paid?

2d. Failing this, are you ready to submit all the questions involved in both cases for the opinions or to the arbitration of the several foreign ministers resident here, or to any of them?

I respectfully request an early reply to these questions, and

I have, &c.,

GEORGE F. SEWARD.

No. 21.

Mr. Evarts to Mr. Seward.

No. 171.] DEPARTMENT OF STATE,
Washington, July 28, 1877.

SIR: I have to acknowledge the receipt of your dispatch No. 249, dated 17th May last, in relation to the "Ward claims" and "Keorjeor case." You transmit with your dispatch a copy of your note of the 14th May to Prince Kung, to say—

1st. Is your imperial highness prepared to acknowledge your responsibility to the seventeen merchants and to Mr. Hill, and to begin with the consideration of the exact sums which are to be paid?

2d. Failing this, are you ready to submit all the questions involved in both cases for the opinions or to the arbitration of the several foreign ministers resident here, or to any of them?

In relation to your remarks about securing my approval before putting these questions, I may state that it is, as a general rule, required that propositions of a decisive nature should be submitted by the minister to the Department for its decision before being officially presented to the government to which the minister is accredited. In the present case,

however, you were virtually authorized by the Department in instruction No. 124 to make the second proposition to the Chinese authorities, and it would seem that the first proposition was an almost absolutely necessary preliminary to the second.

Your views in regard to the future conduct of these officers, and your course thus far in relation to them, are approved by the department.

I am, &c.,

WILLIAM M. EVARTS.

No. 22.

Mr. Seward to Mr. Evarts.

No. 266.] UNITED STATES LEGATION,

Chee Foo, June 7, 1877. (Received July 27.)

SIR: Since I addressed to you on the 17th ultimo, my dispatch No. 249, in regard to the Ward and Keorjeor claims, the prosecution of these matters appears to have been sensibly advanced, whether so in point of fact remains to be seen.

You will remember that I transmitted to you, with that dispatch, a note which I had transmitted to the foreign office on the 14th of May, asking them to say whether they were prepared to acknowledge responsibility to the claimants, and, if not, whether they would submit the matters in issue to the arbitration or meditation of the members of the diplomatic body at Peking, or to any of them.

Having already determined to take my family to Che Foo for the summer, and to leave the capital on the 29th of May for this purpose, I sent to the foreign office on the 21st of May two notes, one saying that I should take my departure on the date named, and asking for an interview on the 24th in order to take leave of the ministers; the other mentioning also that I would leave the capital as before stated, and asking for an answer to my note of the 14th prior to my departure. I inclose copies of these notes.

On the 24th, which fell on Thursday, I paid the proposed visit to the Yamen. I was received very pleasantly, and remained engaged in a general conversation with the ministers for about an hour. I carefully avoided business matters.

On the 25th I received a note from the foreign office, saying that certain of the ministers would call to return my visit on the 27th. As this would be Sunday, and as I preferred, while preserving entire politeness, to avoid any step which might in any way weaken the obligation which I had put upon the ministers to accord a formal answer to my letter of the 21st in regard to the claims, I responded that the day named being Sunday, it would not accord with the regard in which we hold it to receive their call, and begging the ministers not to come, but to consider the visit as made.

On the next day, Saturday, another note came from the ministers, in which they excused themselves for having proposed to call on Sunday, and asked whether I could send Mr. Holcombe to the foreign office before my departure, in order that they might speak with him about the claims matters. I responded that he would call on Monday at noon.

In dispatching Mr. Holcombe to the foreign office on that date, I

asked him to hear what might be said, but not to make any response or argument.

On reaching the Yamen he was told that a dispatch had been prepared in answer to my note of the 14th, and that the ministers wished to know whether it would be satisfactory to me before sending it. The letter was shown to him, the explanation made that the proposal meant a reference of the matters to the viceroy at Nanking, and a certain assurance given that this reference was intended in good faith to secure the early and just settlement of the business. For a more explicit statement of this conversation, I beg leave to refer you to the inclosed memorandum, which has been prepared by Mr. Holcombe.

To all this Mr. Holcombe responded, of course, that he had come only to hear what the ministers might say; that he had no authority to express an opinion whether the proposal would prove satisfactory; that he would place it before me, and return later in the day with my answer.

In reporting the matter to me, Mr. Holcombe felt himself justified in saying that the manner and tone of the ministers had left upon his mind the impression that they were advancing the proposal in good faith. He did not fail, however, to state that the dispatch which had been shown to him conveyed no exact assurance that the reference would result satisfactorily.

I requested Mr. Holcombe to return to the ministers at once, and to say that, as they had chosen the course indicated, and had assured us that it was intended to promote an early settlement of the matters, I accepted their proposal without a question or reservation, relying upon their good faith, as I should expect them to rely upon ours.

I am well aware that my ready acceptance, or indeed my acceptance at all, of their proposal can be criticised; indeed, that nine out of ten persons who know the Chinese would say that I ought not to have accepted it. They would hold, first, that a minister accredited to the Chinese court ought not to allow himself to be referred to a provincial officer. To this I may answer that the reference to Nanking, as I understand it, does not go to the root of the business. I look upon it rather as a way chosen by the government to cover its retreat, and that the issues to be discussed at Nanking will relate rather to the calculation of the sums which are to be paid to us as principal and interest. Moreover, I shall not go to Nanking myself, not at least to enter upon a prolonged discussion with the viceroy. I shall send Mr. Holcombe, and this was understood at Peking. Objectors can hold again that the proposal of the Chinese is a piece of diplomacy intended to put us off, and in this way to gain time and perhaps to raise new issues. To this I can only respond that all this may be true, but that as a matter of principle I had no right to condemn the government in advance of the fact.

I indulge the hope, indeed, that instead of having made a mistake, I have really put matters in train to assure good relations with the government. I believe that our representation of the given matters has won the respect of the Chinese. Illogical as their responses have been, they know well enough what a well directed and enforced argument and representation is. They respect firmness. Outside of the given matters, again, I have, as I trust, managed all other business with them in a fair and reasonable way. I hope, therefore, that they have reached the impression that we will not be trifled with, but that on a higher plane of intercourse our relations may be satisfactory in the extreme. There are, perhaps, graver questions ahead of us than any which I I have heretofore been obliged to contest, and the way is being pre pared, as I hope, to meet these in a candid and moderate manner.

I inclose the dispatch which the foreign office addressed to me in pursuance of our understanding. I commend it to your attention in view of what I have written. It could hardly be more vague or, judged by ordinary rules, more unsatisfactory. Knowing less of the Chinese, I would have rejected it without hesitation. Knowing as much as I do, I do not allow myself to be perfectly sanguine of the result.

With this dispatch there came two others. They are responses to my earlier dispatches in regard to the claims, and maintain the case of the government against them.

It will strike you that our negotiation does not become more intelligible in view of these dispatches. I may say, however, that my conviction that I was not wrong in accepting the reference to Nanking is not affected by these letters. Beyond the fact that the course of administration would justify the reference to Nanking is the other one that Chinese statesmen are sensitive and proud. The members of the foreign office are capable of directing the viceroy to close this business, and yet of holding a front which would indicate that they abate nothing of their pretensions. They may, indeed, not only hold their front toward us, but they may write to the viceroy in such strain as to leave it to appear upon their records that they have not yielded in any way, conveying to him otherwise an intimation of their meaning and putting it upon him to shoulder apparently the responsibility of making a settlement.

This is my reasoning in regard to these letters; but manifestly the position is not sure, and we must be content to take our course, knowing only that, however it may result, we have done all that is possible to meet the varying aspects of the negotiation, and nothing which can compromise the strength of our position or our dignity.

It is my intention to dispatch Mr. Holcombe from this port to Shanghai on or before the 9th instant. I have already requested the acting consul-general to ask the admiral through the senior naval officer at Shanghai for a vessel of war to convey him to Nanking, and written to the admiral in explanation of my request. I inclose a copy of the latter letter.

I have not yet prepared Mr. Holcombe's instructions. I shall send them to you at any early day.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 266.]

Mr. Seward to Prince Kung.

PEKING, *May* 21, 1877.

As it is my intention to leave Peking for a season on the 29th instant, I beg leave to say that I shall call at the foreign office on Thursday, the 24th instant, at 3½ p. m., to take leave of your imperial highness and the ministers of the Yamen, or such of your number as may find it convenient to be present.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 2 in No. 266.]

Mr. Seward to Prince Kung.

PEKING, *May* 21, 1877.

I beg leave to inform your imperial highness that it is my intention to leave Peking on the morning of the 29th of this month, in order to accompany my family to Che Foo.

I beg leave to request that, if convenient, you will favor me with an answer to my letter of the 14th instant, in regard to the "Ward" and "Keorjeor" claims, prior to that date.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 3 in No. 266.]

Memorandum of an interview between the ministers of the foreign office and Mr. Holcombe in the cases of the "Ward" and "Keorjeor" claims.

Pursuant to the instruction of Mr. Seward, Mr. Holcombe went to the foreign office at noon of the 28th of May, 1877. He met there three ministers and two secretaries. After the usual introductory conversation, Shen, the senior minister, broached the subject of the claims, by saying that as Mr. Seward had requested an answer to his letter of the 21st instant prior to leaving Peking, one had been prepared, and they had requested that Mr. Holcombe be sent to the Yamen, as they were unwilling to dispatch their answer until they could learn whether it would be satisfactory. He then went on to say that the foreign office quite fully shared Mr. Seward's anxiety to have the two cases under consideration disposed of; that the prince had censured them for not bringing about a solution, but that the foreign office had serious difficulties to contend with. They had no funds under their immediate control from which the sums could be paid, and in the absence of documentary evidence it would subject them to severe criticism if an attempt were made to secure the necessary funds from the board of revenue. He ended by saying that the Yamen had thought of a plan, which was, in short, to refer both cases to the viceroy at Nanking, with instructions to "settle them up."

Mr. Holcombe inquired whether the proposed answer to Mr. Seward's letter would state fully and in detail this plan. Shên responded that it would not; that it would indicate nothing further than that a plan had been thought of; that the object of the present interview was not to talk about the cases in the way of business, but in a private, friendly manner, and that the mode of settlement which they had in mind was to be informal; that they should not even address the viceroy in a formal dispatch instructing him to "settle the cases," but in a private letter.

Mr. Holcombe then said that he should like to have the expression "settle the cases" explained more fully, and inquired whether it meant "pay the claims." Shên responded that it meant simply "settle the cases," and that while they should not in their letter to Nanking mention the word "money," yet they were sincere in their desire and intention that this reference should result in a manner satisfactory to the American Government. The answer proposed, and which was sealed and ready to be sent to the legation, was then brought in and shown.

Mr. Holcombe remarked that he had no authority further than to hear what the ministers might wish to say, that he could venture no conjectures even as to whether it would be accepted by Mr. Seward, but that he would report carefully what they had said, and would return later in the day with Mr. Seward's answer.

Having reported the foregoing conversation to the minister, and received his further instructions, Mr. Holcombe returned to the foreign office at 4 p. m., where he met the same persons as at the earlier hour. He informed them that he was instructed to say that, relying upon their sincerity and good faith, Mr. Seward accepted their proposition, and hoped that they would not only address the viceroy in the premises at once, but in such terms as would secure his immediate attention to the business.

The ministers responded that they would surely do so, and that the viceroy would be ready to act as soon as the legation could send any one to treat with him. They then asked what arrangements Mr. Seward would make for the transaction of the business with the viceroy. Mr. Holcombe replied, that although the minister had not formally stated his intention, yet he presumed that the secretary of legation would be instructed to proceed to Nanking. The ministers expressed their satisfaction, and said they would mention the probability to the viceroy.

On taking leave, Shên remarked, in a way of pleasantry, to Mr. Holcombe that Mr. Seward must not be angry if the dispatches which would be sent in that evening seemed to continue the discussion of the cases, as the informal understanding had that afternoon superseded and taken the place of their formal words.

The tone and manner of the ministers, in both conversations, indicated strongly an anxiety to put an end to the matters under discussion, and tended to give one confidence in their assurances of sincerity and good faith.

[Inclosure 4 in No. 266.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication in reply.

Upon the 15th instant I had the honor to receive a dispatch from your excellency stating that you had forwarded to your government certain correspondence in the

"Ward claims" and "Keorjeor case," and that you were in receipt of a reply, which declared that your statements to the Chinese Government are clear and correct as to the facts, and that your course is approved. Your excellency further suggests two modes of settlement of these cases, for which you request my consideration and a reply at an early day, &c.

The remark of your government that your statements were clear and correct refers to your dispatches and conversations with this office. But the responses of this office were also certainly couched in language both proper and in accordance with right. For them I bespeak a further examination by your government.

Your excellency expresses a desire to settle these cases. But outside of the two modes suggested, another plan is thought of which shall settle these public matters in an informal, friendly manner, without difficulty on either side, and so give entire satisfaction; and thus I beg leave to respond to your excellency.

PEKING, *May* 28, 1877.

[Inclosure 5 in No. 266.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communi cation in reply.

Upon the 30th ultimo I had the honor to receive your excellency's dispatch in the matters of the "Ward claims" and the "Keorjeor case," in which your excellency stated you were pleased to see that this office acknowledged that these claims had been arbitrated, that there were certain rules of arbitration, and that this fact could never hereafter be called in question; that your government had shown a disposition to deal with these claims in a liberal spirit; that although small in amount, yet they involved the grave consideration whether, in case they could not be settled, more important questions could be satisfactorily dealt with, &c.

In reply, I beg leave to state that in international business there can but be matters requiring discussion. In the points in any given case, that which *is* certainly *is* and that which is *not* certainly is *not*. Why should they not be acknowledged? If that which actually existed be denied, then the business in point could not be held to have been conducted in an equitable and just spirit. Regarding the clause "This fact cannot hereafter be called in question," your excellency need have no anxiety. But as regards the right or wrong, the truth or falsity, of these claims, please suffer a close scrutiny, and allow me to speak of them again somewhat in detail.

The dispatch under reply states: "Your imperial highness's statement that he did not agree to pay, whether the award was just or not, I cannot understand. Woo, Taotai, agreed to submit to arbitration, but afterward repudiated his agreement. A merchant who violates his bond is held by all men to be dishonored," &c.

I beg to remark that no matter who are the persons concerned or what the business, all things should be done in strict adherence to the single word "justice." If, in this case, the award of the arbitrators had been just, what need would there have been for troublesome argument, lasting to the present moment? But because their award was not just, and Woo could not in consequence give assent to it, the case has come to this office. If this office should make no examination into the merits of the arbitrators' award, but should simply accept their verdict as final, could this be called just? For example, your dispatch cites a bond given between two parties, one of whom afterward violates it. Suppose, now, a suit at law follows this violation of a bond. Certainly the magistrate who tries the case is bound to personally examine into the transaction concerned, the wording of the bond, and the reason for its violation. If he did not inquire carefully into all the facts, but contented himself with ordering the maker of the bond to carry out its stipulations, how could this be considered an upright trial and judgment?

In response to your excellency's question as to what points in the award were unjust, I beg to request you to consider again the second and third points made in my dispatch of last January, and the first point in my dispatch of last March. Therein are stated the respects in which the award seems to me to be unfair.

You remark that the claim against Benson could have been prosecuted before the consular court, but neither before nor after the arbitration was a suit entered, &c.

I beg to observe that while your excellency held the post of consul-general Woo, Taotai, desired to recover the money due from Benson, and addressed you requesting his arrest, but you failed to arrest him. Thereafter the correspondence is full of discussion as to whether money should be recovered from him, and requesting you to examine the matter and decide it, and quoting the treaty on the recovery of moneys due, &c. But your excellency failed to secure the recovery of the debt.

The dispatch under reply states that Woo, Taotai, failed to point out how the sum

of 270,000 taels, which he claimed as due from Ward, was made up, and that after Ward's death certain arms were delivered to Chinese officials at Shanghai, &c. If this sum had been spent, the person spending it could give the items. But if received and not expended, or only expended in part, how could the party who furnished the funds explain in detail how it had been used? This office would further remark that the records of this case show that during the fall and winter of the previous year Ward's brother had sent forward three consignments of munitions of war, but that during that half year not one had been received from him. As no further supplies of munitions of war came to hand, so the contract for steamers became invalid. China thus received three consignments of arms, but it is not shown in the records that she received, in addition to those three, the full amount ordered. As to the steamers, not even one was ever received.

Your dispatch further states that Woo, Taotai, did not wish to go into an examination of Ward's accounts a second time, because his letter contained the phrase, "there is no use in going into them again," and that he said this possibly because fearing that it would be shown that he was in debt to Ward; also, that at one time he said he had given Ward 120,000 taels, and at another 270,000 taels, and that the correspondence shows this variation in his statements, &c.

Your excellency would appear to hold Woo Taotai's remark, "there is no use in going into them again," as evidence that he was unwilling that they should be re-examined. But his letter also declares that there were the items of his account against Ward, which he had already brought to your notice repeatedly, and he inclosed a detailed statement of them in reply to you. And this fact explains why he did not care to go over them again. If considered in connection with the detailed account sent, it would seem that his words, "no use to go into them again," only meant that they were perfectly clear, and needed no further consideration, and that he did not mean that he was not desirous of reckoning them. In regard to the quotation about 120,000 taels and 140,000 taels, that was only a quotation of Minister Burlingame's language, and not Woo Taotai's words at all.

To your excellency's remark that your government has shown much forbearance and a spirit of justice in the prosecution of these claims, I, the prince, most heartily assent, and for it express my sincere thanks. I hesitate, not to examine the case so critically, only for fear that otherwise injustice might be done.

It is to be hoped that all matters of public business, whether great or small, may be susceptible of adjustment. But in the given cases this office meets with a difficulty in the way of the accomplishment of its desire for an immediate adjustment in advance of the discovery of a satisfactory mode; and for this I trust that your excellency will exercise forbearance.

To His Excellency GEORGE F. SEWARD,
&c., &c., &c.

PEKING, *May* 28, 1877.

[Inclosure 6 in No. 266.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication in reply:

Upon the 7th instant I had the honor to receive your excellency's dispatch in the case of the steamer Keorjeor, in which your excellency stated that the witnesses for the defense had not in any way been able to overthrow the evidence of the witnesses for the claimant; that three witnesses were produced for the defense, of whom the testimony of Jameson alone seemed to be trustworthy, which was not the case with the two Chinese witnesses. The dispatch further discriminates between written and parole evidence, and holds that if the latter be held to be unreliable, then the former cannot but be regarded with suspicion. It further states that western officials have learned by experience to place confidence in parole evidence. Further, the arbitrators were dealing with claims against Woo, Taotai, while the claim for the Keorjeor was against Yang Takee.

Your excellency's dispatch further remarks that I have stated that I am unable to believe Hill's claim to be just, but that I have failed to point out my reasons for not believing, and hence that you are forced to conclude that no such reasons for disbelief exist, and your excellency requests a speedy settlement of the case, &c., &c.

It appears in this case that the evidence for plaintiff and defendant was mutually contradictory, and that the judge in the case sifted out the true and the false and the straight and crooked, and so gave judgment. As to the witnesses, they only told what they had heard and seen. They cannot be looked at in the same light as the principals, since they have no motive prompting them to contradict each other. If in this case the witnesses for the defendant have not disproved the evidence produced for the plaintiff, so on the other hand neither have the plaintiff's witnesses controverted the

evidence presented by the defendant. This office, because it regards the plaintiffs' statement and his evidence as untrustworthy, cannot but call in question the testimony given by and for him.

Your excellency regards the testimony of Jameson as reliable above that of the two Chinese witnesses for the defense; but he testified: "I had just left the ship and gone on shore when she was seized." Again, "I heard of it, but did not see it myself;" and again, "Burgevine was at the head of the party who seized her," &c. If he had just left the ship and gone on shore, her seizure should have been within the range of his own vision. Why, then, does he say "I heard of, but did not see it?" But if he was at a considerable distance from the steamer, at the time the rebels took the ship and left the port, how could he see that Burgevine was leader? This office looks upon this testimony as at variance with itself; more weak than that of the two Chinese witnesses, which at no point attacks itself.

In regard to your excellency's remark, that if parole evidence is not to be relied upon, how can documentary evidence be held to be above suspicion? You perhaps did not notice that my remark as to unreliability was not intended to mean that all verbal testimony was worthless, but that in Hill's case the testimony of the witnesses could not in its entirety be believed. If a question be raised as to the genuineness of documentary evidence, then, in the case of correspondence between two governments an official seal is used as a proof of validity; or, in the case of contracts between individuals, there is again a stamp or mark, and there is, too, the handwriting, by all of which such documents can be tested and proved. Western nations, in trying cases, look upon parole evidence as trustworthy. China does not invariably reject such evidence, but according to justice holds that as trustworthy which cannot be controverted and is credible.

In regard to your excellency's statement that the claim for the Keorjeor lay against Yang Takee, this office has never seen any decision of the arbitrators to that effect. The claims of the foreign firms were all on account of the Ward corps, and they all sought payment from Woo, Taotai. Since the Keorjeor was manifestly used by the Ward corps, how could it be that in the several hundred items of account only this one should be against Takee?

In regard to the reasons why this office cannot believe that Hill has a just claim, those reasons have been stated in the memoranda connected with two dispatches heretofore sent. Will your excellency please re-examine them?

Your excellency shows a desire that China will, at an early day, settle this case. But you make no mention of the sums due by Ward and Benson to Woo, Taotai. I still hope you will secure the payment of those sums, and not force Chinese alone to suffer loss. This course would be in accordance with equity, and the hearts of all men could not but approve it.

To His Excellency GEORGE F. SEWARD,
&c., &c., &c.

PEKING, *May* 28, 1877.

[Inclosure 7 in No. 266]

Mr. Seward to Admiral Reynolds.

UNITED STATES LEGATION,
Chefoo, June 5, 1877.

SIR: I have to thank you for your letter of the 13th ultimo.

Since my arrival here on the 3d instant I have addressed a letter to the vice-consul-general at Shanghai, asking him to say to the senior naval officer at Shanghai that I have occasion to dispatch the secretary of legation to Nanking on business of some importance and to request him to ask your authority to convey Mr. Holcombe to that port, and to await there the completion of his negotiation, which may occupy a fortnight.

I trust that you will have found it convenient to meet my wishes in this respect. If, however, you have not been able to do so at the moment, I hope that you will advise me whether you will be able to render this service to the legation at a later day, and, if so, when?

I may say that the object of Mr. Holcombe's visit is to close up with the viceroy, in pursuance of an arrangement made with the foreign office at Peking, matters which have engaged the attention of the legation for many years past, and which have only now been brought to what appears the prospect of an early adjustment. It is therefore of much consequence that the opportunity to close the business shall be availed of at once, and in such manner as to give to the representative of the legation all possible facilities to pursue his mission in a convenient and dignified way.

I have the honor, &c.,

GEORGE F. SEWARD.

Rear-Admiral WILLIAM REYNOLDS,
&c., &c., &c.

No. 23.

Mr. Seward to Mr. Evarts.

No. 267.] UNITED STATES LEGATION,
Chefoo, June 8, 1877.

SIR: I have the honor to hand to you herewith a copy of my instructions to Mr. Holcombe in view of his approaching visit to Nanking, to deal with the Ward and Keorjeor claims.

In framing these instructions I have felt obliged to bear in mind considerations which may be advanced upon the Chinese side with a degree of weight, more particularly in the matter of the interest to be claimed on behalf of Mr. Hill. I trust that you will find my couclusions just, and that you will accord your approval to my course.

I have the honor, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 267.]

Mr. Seward to Mr. Holcombe.

CHEFOO, *June* 8, 1877.

You are well acquainted with the negotiations which have been conducted between the legation and the foreign office at Peking in regard to the Ward and Keorjeor claims, and you know all the circumstances which have led up to your present mission to the viceroy at Nanking.

Upon your arrival at Shanghai, it will be your first duty to procure from the consulate-general any papers which you may require in addition to those with which you are already provided. Having received these, you should proceed to Nanking so soon as a vessel is provided by the admiral for your conveyance.

Upon arriving at Nanking, you may send to the viceroy the dispatch from me to him which has been prepared for the purpose, and ask for an opportunity to call and pay your respects. It will not be desirable for you to call upon any other official before visiting the viceroy; and generally throughout your visit you will conduct your business with the viceroy, and not allow yourself to be referred to his subordinates.

I understand that the reference to the viceroy on the part of the government means, essentially, that they acknowledge responsibility to the claimants. If the viceroy opens discussion in such a manner as to indicate that he does not so regard it, after assuring yourself that he intends simply contesting the matter over again, you will say to him that you find that we have misunderstood the intentions of the foreign office, and that you have no alternative but to withdraw and report to me.

In order, however, to deal with the questions which may be raised regarding the amounts due the several claimants, a large part of the evidence may have to be gone into. You will, of course, use perfect patience in explaining all the facts and considerations involved in this respect to the viceroy, so that he may be assured of the merit of what we advance, and be able to defend his action before his own authorities.

You should carefully avoid any expressions which will indicate that we have occasion to be dissatisfied with the foreign office, and cut short your negotiations, rather than to allow them to become unpleasant.

For your general line of argument, and your facts, you will be prepared by your knowledge of what has already been done and the documents which you will carry with you. The inclosed memoranda will afford you guidance in dealing with questions which have not been raised heretofore.

I shall be in Shanghai on or about the 20th instant.

Please report to me then fully in regard to the progress of your negotiation.

I wish you success, and am, sir, your obedient servant,

GEORGE F. SEWARD.

Memorandum on the Ward claims.

[For Mr. Holcombe, to accompany instructions.]

AMOUNTS TO BE CLAIMED.

For reasons which need not be stated here, all persons who had claims against the Chinese Government for supplies furnished to the Ward corps, while it was under the

command of Generals Ward and Burgevine, presented them to the arbitrators appointed by Woo, Taotai, and the undersigned. It has never heretofore been necessary to discriminate between claimants of our own nationality and others, but at this stage of the business it would seem better to adhere to our own people only. A settlement of the claims which are strictly American will probably facilitate the adjustment of the others through the appropriate channels, but whether so or not, it is evident that we should keep within strict lines in the matter.

The claims which are not American are the following:

	Taels.	Dollars
Messrs. Phillips, Moore & Co	180.00	.....
Saikee	.....	$197 50
Wahee	394.65	.....
Messrs Hall and Holtz	1,293.95	.....
Jim Crow	.....	350 13
Apping	.....	1,245 25
Linkee	.....	216 00
T. R. Purden	209.00	.....
A. H. de Carvalho	700.00	.....
	2,777.60	2,008 88

The sums unpaid are shown on pages 19 and 20 of the printed statement inclosed herewith (Mr. Seward's letter to Mr. Twombly, of March 22, 1872). The totals are as follows: Taels, 13,681.46 and $7,703.25. Deducting the amounts given above, say, taels 2,777.60 and *$2,208.88 we have, taels 10,903.86 and $5,694.37 as the principal sums to be claimed for at Nanking.

The original accounts or vouchers should be on file in the consulate-general. But as these accounts have been referred to two sets of arbitrators, and have been frequently referred to and handled, it is not unlikely that some of them may be mislaid or lost. It is desirable for you to provide yourself with all those which are available. They may be delivered to the viceroy in case a settlement with him is reached. But if any of the papers are found on examination to be missing, you will be obliged to raise a question with him, as to the occasion of going behind the award of the arbitrators, or to explain that the absence of such vouchers is not to be considered strange in view of the long negotiation which has taken place. As several claimants are not now in China, it would be difficult to replace missing accounts. A note of the acting consul-general asking him to place all the documents in his hands relating to these matters at your disposal, will be given to you. You will need to make any necessary copies before giving up the originals.

INTEREST.

That interest should be claimed does not admit of doubt. It is but common justice that those who have been kept out of their money for so long a time should be accorded such consideration. Interest was paid, I believe, on the claims which arose at Canton twenty years ago. This, so far as I judge from the imperfect information at my command, is the usual course in such matters. It would hardly be wise to forego interest in China, where advantage might be taken of the fact to procrastinate in all matters requiring money payments. The instructions of the department indicate that it is expected that interest will be collected.

The time for which interest is to be claimed should be calculated under the award of the arbitrators. In their letter to the undersigned, stating their award, dated January 18, 1864, they say: "The accounts as passed are to be cashed during the ensuing month of February, without interest." It is a fair inference that the amounts not paid in February, 1864, should bear interest from that date. It is true that some of the accounts at that date were already two or more years outstanding, and the claimants may consider that they should receive interest for the full time during which the accounts have been running. Perhaps this would be just, but as we are claiming under an award of arbitration, it would not be wise to go behind it.

The rate of interest to be demanded can be decided arbitrarily only, as there is no government rate in China, and as the value of money is constantly and widely varying. It is worth sometimes 12, 15, or 18 per cent. per annum, or even more. It is seldom loaned at the foreign banks at less than 10 per cent. Loans on real estate are effected at 8, 9, and 10 per cent., oftener at the latter rate than at either of the former. The government pays about 9 per cent. on its loans from foreigners.

Looking to all the circumstances, 10 per cent. may fairly be expected, more particularly in view of the fact that both principal and interest have been so long withheld.

But it is not desirable, in my opinion, that the settlement of these matters should be made to hinge on the question of the rate of interest. The agency of the United

* This sum should be $2,008.88.

States may be invoked by our people who are aggrieved in their intercourse with the governments of other countries, but they cannot expect as much from this agency as they may from the course of law in domestic matters. The United States will not desire that the relations of its representative at Peking with the government to which he is accredited shall be wasted in a haggling negotiation in behalf of people who ought to have known the Chinese well enough not to take unnecessary risks. If, therefore, you meet difficulties as to the rate of interest, it will be better for you to withdraw somewhat of your demands. If even 5 or 6 per cent. only can be got, it will be better to close than to prolong the discussion.

MANNER OF PAYMENT.

It is not desirable that the funds be placed in our hands, but preferable that an agreement be reached, that the amounts due to the several claimants, including interest to a day agreed upon, but not later, shall be paid to the claimants respectively, or their representatives, on the certificate of the legation that the persons claiming are such as they represent themselves to be, and that they are entitled to receive the sums agreed upon. Any claimants not appearing for a period of three years, to forfeit the amounts due to them, or to appeal to the central government.

THE INDEMNITY FUND.

It is barely possible that the viceroy may say, that we have in America a sum overpaid to us on account of the Canton claims, and suggest that the claims now brought forward should be settled out of the fund which has thus accrued. You should answer to this, that the amount so paid to the United States was a quit-claim payment, and that if the amounts found to be due upon examination had exceeded the sum, we could not have called upon the Chinese Government to pay the excess, that it has not been usual for governments or for individuals to return amounts overpaid in this way, and that the question is one which has not been raised in Peking, and which neither you nor the chief of your legation has authority to discuss. You will point out that the mode of payment proposed in the last paragraph will avoid any difficulty of the kind in this instance.

CLAIM URGED AGAINST GOVERNMENT.

You will not allow the viceroy to think that we will consent to await proceedings against Woo. Our recourse is against the government, and to this we must hold rigidly. It is the instruction of the department, and it is right.

ASSIGNED CLAIMS.

I have an indistinct memory that I have heard that Messrs. H. Fogg & Co. own by assignment some of the minor claims. I see no reason why they should not take by assignment claims of persons who are citizens of the United States, but I do not think that I ought to recognize any obligation on the part of the United States to prosecute on their behalf claims which have had any different origin.

GEORGE F. SEWARD.

JUNE 8, 1877.

Memorandum on the Keorjeor claim.

[For Mr. Holcombe, to accompany instructions.]

In the matter of interest, mode of payment, and indemnity fund, the remarks made in the memorandum on the Ward claims may be taken generally for your guidance in this case. It is to be prosecuted, also, as strictly a claim against the government and not against Takee's estate. Regarding interest, however, some further remarks will be made.

MEASURE OF THE CLAIM.

Nothing has transpired in the long discussion of this business which indicates that the statements put forward by the claimant in regard to the contents of the charter-party are to be distrusted. On the contrary, all the evidence which touches the questions involved would seem to support his statements, and they may be accepted by you, in your conduct of the business, accordingly.

It has been suggested that as the charter-party was for four months certain, at 3,000 taels a month, and provided that 12,000 taels should be paid in case of the loss of the vessel, the measure of the claim, in view of the fact that she was not returned at the end of the four months, should be 12,000 taels charter-money, and 12,000 taels indemnity. I do not think that this position can be supported, for the reason that it is

directly stated in evidence that the charter provided further, that for each month after the four months, while her use should continue, the stipulated price per month should be paid, and because it does not appear that the option to purchase was given or claimed. This view is accepted by the State Department, as I judge fron the tenor of the later correspondence, and it may be adhered to by you.

The claimant, as it would seem from the fourteenth clause of his petition (page 4 of printed minutes), did agree shortly before the loss of the steamer to sell her to Takee in consideration of the payment of all charter-money then due and owing, and the sum of 8,500 taels. It would seem, however, that this contract failed, by reason of the failure of Takee to make the payment stipulated for, or any part of it, and, as I take it, need not be considered to affect the measure of the claim.

The sums to be asked for will, therefore, be that stated in the petition, say fourteen months' charter, at 3,000 taels, 42,000 taels, and indemnity for loss, 12,000 taels, 54,000 taels. Interest should be claimed from the 1st of August, 1863.

INTEREST.

It is to be said that the charter-money of the ship bears a heavy proportion to her value. It is seldom, I think, that a vessel worth 12,000 taels can be chartered for a sum monthly which amounts to 25 per cent. of her value, or per annum to three times her value. The claimant, it is true, states that she had cost him about 25,000 taels, but if that sum would represent her fair value at the date when she was chartered, it is difficult to understand why it was not inserted in the contract.

Again, for whatever reason, there was much delay in bringing the claim forward in a formal manner. It was so managed, indeed, that a considerable degree of embarrassment has resulted; but this is not of so much consequence as the delay which occurred. The steamer was lost in August, 1863. More than eleven years expired thereafter before the claim was formally brought before the local authorities, and thirteen before it was presented to the government. It is true that Takee was an official, and that in one way and another the claimant was unofficially pursuing him and his family; but it would seem that a reference of it to the proper authorities should have been effected at a much earlier day.

It may be said, moreover, that the prosecution of claims in China, whether against individuals or the government, is attended by many difficulties. The "Ward" claims were declared just by arbitration fourteen years ago, have been urged upon the government ever since, and are not yet settled. If there had been a ready way to pursue Takee in the courts, the claimant would doubtless have taken advantage of it. The preoccupation of the officers of his government has doubtless contributed also to the delay.

In dealing with his case I should say that we cannot go behind the charter-party in making our estimate of the sum which is due to the claimant as principal.

In passing upon the question of interest, however, we may and are bound to give regard to the equity of the case. You will therefore ask for interest from the date of the loss of the steamer at the same rate as in the case of the Ward claims; but if pressed by the viceroy you may acknowledge the force of his arguments, retire your demands gradually, and compromise either upon a half-rate of interest, or, better still, upon a quit-claim payment in lieu of interest. I should be disposed to think that a payment in lieu of interest, say 50 per cent. of the amount of the original claim, might be accepted.

It must be remembered in this connection that I have no distinct authority to make a compromise. It will be desirable, therefore, to lead the viceroy to make an offer to compromise, if such course becomes necessary, and to accept it provisionally, with the statement to him that it will meet my views if it falls within the lines given above, and that I shall so inform my government; but that it is barely possible that another view may be taken at Washington and further recourse against the government directed.

[Inclosure 2 in No. 267.]

Mr. Seward to the Viceroy at Nanking (Shen Paochen).

CHE FOO, *June* 8, 1877.

The bearer is Mr. Holcombe, secretary of the legation of the United States at Peking. He visits Nanking to speak with you about matters concerning which you will have been advised by the foreign office at Peking, and with which he has full authority to deal on the part of the United States.

I seize this opportunity to convey to your excellency the expression of my great respect.

I have the honor to be, sir, your obedient servant,

GEORGE F. SEWARD.

No. 24.

Mr. F. W. Seward to Mr. G. F. Seward.

No. 174.] DEPARTMENT OF STATE,
Washington, August 3, 1877.

SIR: Your dispatches, Nos. 266 and 267, in relation to the "Ward" and "Keorjeor" claims, have been received. It appears from the first that you had agreed to a reference by the Government of China of these claims to the viceroy of Nanking, and that you are confident of good results to the claimants from this reference. I have to express a hope that your anticipations in this respect may be realized, and that no unnecessary delay shall intervene.

I am, &c.,

F. W. SEWARD,
Acting Secretary.

No. 25.

Mr. Seward to Mr. Evarts.

No. 286.] CHEFOO, *June* 30, 1877. (Received August 18.)

SIR: I have the honor to inform you that I have received an unofficial note from Mr. Holcombe, in which he states that he has reached Nanking and had two interviews with the viceroy. It would appear from the tenor of his letter that the prospect of an early adjustment of the claims is good. I have asked him to inform you by telegraph if he succeeds in making a settlement.

I have, &c.,

GEORGE F. SEWARD.

No. 26.

Mr. Seward to Mr. Evarts.

No. 290.] CHEFOO, *July* 7, 1877. (Received Augnst 18.)

SIR: I have the honor to hand to you herewith Mr. Holcombe's report upon his negotiations with the viceroy at Nanking in regard to the "Ward" and "Keorjeor" claims.

The viceroy has fully admitted the validity of the "Ward" claims, and the charter and use of the steamer Keorjeor. He is prepared to pay the sum due on the "Ward" claims as principal, but will not consent to allow interest. He is prepared also to pay a less sum than was demanded for the use of the steamer, but again refuses interest. He holds, however, that the proposed sale of the steamer to Takee for 8,500 taels must stand, and will allow interest on this sum and pay principal and interest. He denies the responsibility of the government in respect of the claims, holding that they are only against the families of Woo and Takee, but is prepared to pay the amounts admitted by him, and to recover them from the families mentioned himself.

It will be seen that the viceroy's admissions cover a great part of the case which we have urged upon the foreign office, and which they have so strenuously resisted.

I refrain from comment on the result of Mr. Holcombe's mission until he returns, which will be in a few days, and I have had an opportunity to hear what he has to say and to examine the papers which he holds bearing on the alleged excessive rate of the charter of the Keorjeor.

I am only half-way sorry that the reference to Nanking has failed, for the fact will arm me with arguments against consenting hereafter to a procedure which is manifestly inconvenient.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in dispatch 290.]

Mr. Holcombe to Mr. Seward.

SHANGHAI, *July* 2, 1877.

SIR: I have the honor to report my proceedings under your instruction of the 8th ultimo, in which I was requested to visit Nanking and effect, if possible, with his excellency Shen, southern superintendent of trade, a settlement of the so-called "Ward" and "Keorjeor" claims.

Acting under that instruction, I left Chefoo upon the 11th of June, and reached this port upon the 13th. The American vessel of war Palos, having, in accordance with your request, been placed at my service by Admiral Reynolds, was lying here awaiting my movements. Several days were necessarily spent here in selecting and arranging certain papers in the cases in question, and which might be of use at Nanking. While here, information of an informal, but reliable, nature reached me to the effect that the customs intendant at this port had received dispatches both from the viceroy at Nanking and the foreign office at Peking, the tenor of which, as I heard it, seemed to indicate that the Chinese Government were in earnest in their professions of a desire to effect an early settlement of the questions at issue.

Having perfected my arrangements, I left this port Monday afternoon, June 18, and reached Nanking upon the 20th. I immediately dispatched a messenger to the viceroy with your letter of authorization, and with it sent a note informing his excellency of my arrival and expressing a desire to call and pay my respects. I inclose a copy of my note. In the evening of the same day the viceroy responded, fixing ten o'clock of the day following for my call. By my request Commander Wise and Lieutenant Garst, of the Palos, accompanied me upon this visit, which was purely formal in its nature. The viceroy met us in an exceedingly cordial and friendly manner, and I may say that my entire intercourse with him was of the same pleasant sort. In the afternoon of the same day his excellency sent his official secretary to express his regrets that he was unable to return my call in person, as he was occupied in offering up prayers for rain. Immediately after the departure of that gentleman I sent a note to his excellency asking whether I could see him the next day, Friday, June 22, on business. A reply came promptly appointing an interview. At this first conversation the viceroy insisted strenuously upon a delay of one or two months in our negotiations, until he should have received a report which he stated he had directed the customs intendant at Shanghai to make upon the whole business. The inclosed *precis* of our remarks will show you the line of his argument and my responses.

It may seem to you that in view of the fact that he admitted squarely that certain sums were due on both claims, and that he desired this delay only in order that he might act intelligently as to amounts, that I resisted with undue persistency his request.

I may say on this point that I was influenced by a doubt whether his request was made in good faith or was only an effort to gain time, and that while I did not see my way clear to break off our negotiations in case he insisted upon this delay, on the other hand I was anxious to transact the business at once if his excellency could be brought to waive his request. He did not afterwards repeat his desire for further time, nor even refer to his having expressed it. The first interview closed with an understanding that I should see him the next day, when certain important papers would be laid before him. On taking leave I handed him the Chinese text of the inclosed memorandum, which indicated the amounts, principal and interest, claimed in the two cases.

My second interview took place Saturday, June 23. I laid before his excellency certain of the more important documents bearing upon the claims, and at his request left them with him for examination. I beg leave to refer you to the accompanying *precis* for a detailed statement of what passed at the second interview. You will notice that in it his excellency promised to make me a formal proposition for the settlement of the questions at issue within two days, and that he asked for any other papers which could serve him in coming to a decision. After my return to the ship I sent him a note covering several other documents.

Nothing further was heard from his excellency until Tuesday, June 26, when the intendant of circuit at Nanking called by direction of the viceroy to pay his respects and to inform me that the latter would send me the day following, by the hand of his secretary, his proposition of a basis for settlement. At the time named the secretary called and laid before me two memoranda, one each upon the Ward and Keorjeor matters, translations of which I have the honor to inclose. As it did not seem best to enter upon any discussion with his excellency's subordinate, our interview was very brief. I contented myself with expressing my regrets that no terms had been proposed which could be accepted, and by saying that so far as the statements in his excellency's memorandum on the Keorjeor case were concerned, there was not merely no evidence to substantiate them, but they were most conclusively refuted by the evidence produced at the trial of the case in Shanghai, the printed report of which in English and Chinese had been placed before his excellency. I added that in the Ward claims it was evident that if the principal was due, then interest also could with justice be claimed, and that I could not consent to any proposition looking to the reopening of Mr. Benson's matters, since they had been passed upon by arbitrators whose decision the late Taotai had bound himself to accept, and they had decided that Benson was not guilty of fraud, and was not indebted either to Woo or to the Chinese Government. On closing the interview, I handed to the viceroy's secretary a further memorandum, which I requested him to lay before his excellency, and said I would call Thursday, June 28, in order to discuss our business further with him. In this second memorandum you will notice that I repeated the claim in the Ward case, but offered a conditional compromise in the Keorjeor matter.

I met the viceroy in accordance with my appointment made with his secretary, and laid before him a brief rejoinder to his memoranda upon the Ward claims. Unexpected circumstances prevented the preparation of a similar minute upon his proposition regarding the Keorjeor case. I beg leave to refer you to the inclosed *precis* of our interview. You will see that while reiterating his opinion that the claims were grounded on justice, the viceroy refused to allow interest in one case or to modify his proposition in the other. After assuring myself that there was no hope of inducing him to modify his position in the business, I informed him that I had no alternative but to close our negotiations, and took my leave. Immediately upon returning to the ship I addressed his excellency in a formal dispatch, in which I recited the position assumed by him upon the various points raised, and his assertion that he would not consent to pay any larger sums than those named in his memoranda, and requested him to inform me in an official reply whether I had understood him correctly, in order that I might make the necessary report to my superiors. With this I sent a note requesting to call and take my leave of him Saturday morning, June 30. He responded to my note at once, saying he would see me. In my final call his excellency brought in his reply to my official dispatch, and said he wished to submit it to me personally before dispatching it. After reading it over, I remarked that it was an answer to my letter, and I could only reiterate my expressions of regret that his excellency had not seen his way clear to come to terms which could be accepted by me in the matters at issue. No other reference to the claims was made. I inclose a translation of his excellency's response to my dispatch.

Immediately after reaching the Palos we left Nanking, and reached this port at noon yesterday. I inclose a note of thanks which I have handed to Commander Wise for the courtesies extended to me on the journey.

While regretting exceedingly that my mission to Nanking has not been successful in closing the Ward and Keorjeor cases, I still hope that it will seem to you that the business has been decidedly advanced, and the prospect of an eventual settlement in conformity with justice increased.

I trust that my course in these negotiations will meet with your approval.

I have, &c.,

CHESTER HOLCOMBE.

[Inclosure 1 to inclosure 1 in No. 290.]

Mr. Holcombe to His Excellency Shên.

SOUTHERN SUPERINTENDENT OF TRADE, &C., &C.,
Nanking, June 20, 1877.

The undersigned, deputed by his excellency the United States minister, under an agreement with the foreign office at Peking, to transact certain important matters of business with your excellency, has the honor to announce his arrival. He begs also to express his desire to call and pay his respects to-morrow, and to inquire whether this will be agreeable to your excellency, and, if so, at what hour it will be convenient for you to see him.

With compliments,

CHESTER HOLCOMBE.

[Inclosure 2 to inclosure 1 in No. 290.]

His Excellency Shên to Mr. Holcombe.

NANKING, *June* 20, 1877.

I have just had the honor to receive your letter informing me that in obedience to instructions from his excellency Mr. Seward you had arrived at this port in order to discuss certain matters of business with me. I am exceedingly pleased to hear of your arrival, and beg of you that you will call to-morrow, at 10 o'clock, at which hour I will have all preparations made [literally, have the path swept,] and await you.

Card and compliments.

[Inclosure 3 to inclosure 1 in No. 290.]

Mr. Holcombe to His Excellency Shên.

NANKING, *June* 21, 1877.

The undersigned proposes to call at the viceroy's office to-morrow, for the purpose of discussing certain matters of business.

He begs to inquire whether it will be convenient for his excellency to receive him, and, if so, at what hour?

I have, &c.,

CHESTER HOLCOMBE.

[Inclosure 4 to inclosure 1 in No. 290.]

His Excellency Shên to Mr. Holcombe.

NANKING, *June* 21, 1877.

The undersigned has had the honor to receive your note, and he will be glad to see you at his official residence to-morrow morning at ten o'clock, where he will await your presence.

Card and compliments of Shên Paochen.

[Inclosure 5 to inclosure 1 in No. 290.]

Memorandum of conversation held between His Excellency Viceroy Shên and Mr. Holcombe regarding the Ward and Keorjeor claims.

In obedience to an appointment made with the viceroy, Mr. Holcombe presented himself at the former's official residence at ten o'clock, Friday, June 22. His excellency's private secretary and an English-speaking Chinese were in attendance. After the usual introductory conversation, Mr. Holcombe opened his business by saying that his excellency had doubtless learned from the foreign office at Peking of the object of his coming to Nanking, and that the official dispatch from Minister Seward, which he had had the honor to hand the viceroy two days earlier, would have given him information as to the nature and scope of his powers in the given business. He added that although the course proposed by the foreign office was not, perhaps, exactly in accordance with the mode of procedure which obtained among western powers, the United States minister had accepted it, confiding in the desire expressed by the Chinese Government to reach a settlement, and not less in the high character and friendly spirit of his excellency the viceroy. To which the response was made that the foreign office had given him full information of the nature and object of the reference of the business to him, and that Mr. Holcombe would probably be deputed to act with him; that he was very glad to see the secretary of legation, and had no doubt that the questions at issue would easily be settled. He added, however, that the cases, though of long standing, were new to him, as he had held the office of superintendent of southern trade for about two years only, and that as the two cases had originated at Shanghai he had instructed the intendant of circuit at that port to make a careful examination and a full report, and he must ask Mr. Holcombe to wait a month or two until that report was received. Mr. Holcombe replied that the two cases were of long standing, being now some fourteen or fifteen years old; that they had been examined and re-examined both at Shanghai and Peking; that one was a claim under an arbitration agreed to by the consul-general at Shanghai and the Taotai there years ago, and made with

great care by two gentlemen of high reputation; that the other had had a full and exhaustive trial in open court at Shanghai, and had since been discussed at great length between the foreign office and the legation, besides having been once referred to his excellency the viceroy himself. Mr. Holcombe added that if the Chinese officials at Shanghai had managed these matters in a proper manner they would both have been settled years ago, and that it was difficult to understand what was to be gained by a further reference of them back to that port. It was expressly stated by the minister of the foreign office in personal conversation that reference to the viceroy at Nanking meant an immediate settlement of the issues concerned at Nanking; that he had brought with him the full records of the two cases from their origin down to the present, and was prepared and would be glad to go through them carefully from beginning to end, and to give any reasonable amount of time to it, but so far as any further relegation of one or both cases back to Shanghai was concerned, his instructions were imperative, and he could neither consent to accept such reference, take cognizance of, or be influenced by it.

The viceroy inquired whether the two gentlemen, Messrs. Cunningham and Hanbury, who acted as arbitrators in the Ward claims, were still in China. Mr. Holcombe replied that he believed not; that one had returned to his home in America and the other to his in England.

The viceroy stated that he was informed by the foreign office that Mr. Seward had a dispatch from the present viceroy of Chihli, Li, written when Li was governor of Kiangsu, which proved conclusively that the steamer Keorjeor was chartered and used by the Chinese Government; said he was anxious to see it, and inquired whether that was included among the documents with which Mr. Holcombe was provided. Response was made that it was, and that Mr. Holcombe would be glad to submit it to him. The viceroy then went on to say that he was quite willing to admit that in both cases there was good ground for the claims presented, but that he was not so clear as to the *amounts*, and that he needed to have the report of the Shanghai Taotai, which would include the statements of the heirs of the two former Taotais, Woo and Yang Takee, before he could act intelligently in regard to the amounts to be allowed, or decide on the sums which he should recover from the heirs mentioned. Mr. Holcombe answered that in the Ward claims he was provided with the original papers of award made by the arbitrators and an official dispatch from Woo to the consul-general, in which he agreed to pay certain items of the award and refused to pay certain others; that the repudiated items constitute the sum now sought in that case, and a few moments would be ample to decide the amount.

In the Keorjeor case there was uncontroverted testimony given at the trial at Shanghai both in regard to the sum per month for which the steamer was chartered, the time she was used, and the amount fixed as indemnity in case of her loss. Hence it would be equally easy to arrive at an opinion as to the amount to be allowed in the Keorjeor claim; that it would seem that the only question which called for any considerable consideration was that of the interest to be allowed. Mr. Holcombe then went on to say that it was proper for him to call the viceroy's attention to the fact that the cases as they now stand are claims made by the Government of the United States against the Government of China, and not by private individuals of one nation against private individuals of the other, and that hence the questions as to what steps the viceroy should take against or how far he should pursue the heirs of Woo and Takee was one with which Mr. Holcombe had absolutely nothing to do and no opinion to express further than to remark that it would seem that such questions could safely be left to be decided after the settlement between the two governments had been reached. Mr. Holcombe then added further that he must beg of the viceroy to keep in mind these two important facts: first, that the claims were against the Government of China, and could not in any degree be allowed to depend upon the success or failure of steps taken by that government against its subjects; and, second, that the United States minister had consented to the reference of the cases to Nanking, but no further, and that it was quite impossible to entertain any proposition looking to their relegation to any other officials, either at Shanghai or elsewhere. He reiterated his readiness to go into all the details of the cases with his excellency. The viceroy said that he understood perfectly that the claims were against his government, and that it made no difference to us what course he took with the heirs of Woo and Takee. He understood also that Mr. Holcombe could not consent to a reference of the business to Shanghai, in the ordinary meaning of the phrase. But he needed to await the Shanghai intendant's report in order to be able to act intelligently himself and to enable him to take such a course as he could defend before his superiors. He did not ask the secretary of legation to take cognizance of or to know anything about the report which he had directed the Shanghai officer to make, but all he claimed was delay until he had that report, because he could not take an intelligent decision without it. He then added laughingly, "I have no doubt there is money due by my government in these claims, and if you will accept of 30,000 taels in full of all demands I will pay it to you here and now." He then added, speaking with great earnestness, "The documents

which you bring cover only your side of the case. Give me a month or two in which to get a report and the records from Shanghai, and then I promise you I will settle the whole business to your entire satisfaction. If I fail, you may consider it a personal wrong done to your government by me, and it may ask for my removal or any punishment it chooses, and I will acknowledge its justice." Mr. Holcombe replied that, looking at the proposed reference in that light, he could only reiterate what he had already said, that questions of amount could be settled by documents now in his possession, and which his excellency would not question, and that, so far as any other purpose of the reference was concerned, it would seem to affect only certain questions with which the United States Government had no concern. The viceroy then said that in the Keorjeor case the charter-party was not produced in evidence, and it did not seem reasonable that a steamer for which indemnity in case of loss was claimed only to the extent of 12,000 taels should have been chartered for 3,000 taels per month. The charter-money seemed very large. Mr. Holcombe responded that it must be remembered that the number of steamers suitable for the work done by the Keorjeor in those days was very small, and that the hire would be high in consequence. And although the charter-party was lost, there was ample evidence as to its contents given by reliable parties who had seen it. The viceroy remarked that he was not less desirous than the secretary to settle up these cases, was quite willing to admit that the claims were just, and would be ready to pay them when he could know what amounts should be allowed, but he could not arrive at that knowledge until he heard from Shanghai, and that, as the United States had already waited fifteen years, he could see no reason why we should not wait two months longer.

Mr. Holcombe inquired whether the full reports in the cases were not in the viceroy's office. A negative answer was given. Mr. Holcombe expressed his surprise as the Shanghai officer was subordinate directly to the viceroy in all matters relating to foreigners. The viceroy said there were memoranda on the cases, but not the original papers. He then said: "Suppose your brother had been owing you money for sixteen years, and when you asked him for it, requested two months' time in order to find out whether he really owed you the amount claimed, would you not grant it to him?" To which Mr. Holcombe responded: "Certainly; but the cases are not similar. If he had owed me sixteen years, during all of which time I had endeavored in vain to secure payment, justice would indicate that he could not with reason ask for longer delay." He then said that the claims in question had been brought to the notice of the Chinese Government by the successive ministers of the United States for the last twelve years or more, in obedience to instructions from the Department of State; that during the past year they had had full consideration at the hands of the minister and the foreign office, with the result that that office had proposed their reference to Nanking "for settlement," coupled with the assurance that they should have immediate attention. Mr. Seward had accepted this proposition, although it was not in accordance with rules of procedure in vogue, because of his desire to concede as far as possible to Chinese modes; that certainly no question could be raised as to the patience and fairness which the United States had manifested in these matters; that it was certainly full time they were closed, and that there seemed to be no sufficient reason for the delay asked, and no cognizance could be taken by him of any report made by local authorities at Shanghai.

At this point, as the interview had been prolonged to nearly three hours and a half, and the viceroy showed signs of extreme fatigue, Mr. Holcombe took his leave, after having left a memorandum of the amounts of the claims, principal and interest, the latter being computed at 10 per cent. per annum up to July 1, 1877, and having made an appointment for another interview the following day. The entire conversation, though frank and plain spoken, was pleasant and friendly, and his excellency was exceedingly courteous and cordial throughout the interview.

CHESTER HOLCOMBE.

NANKING, *June* 23, 1877.

[Inclosure 6 to inclosure 1 in No. 290.]

Ward and Keorjeor claims.—Memorandum of amounts claimed.

The balance unpaid of the award as given by the arbitrators is 13,681.46 taels and $7,703.25. Of these sums certain portions are claimed by persons who are not American citizens, and for these Mr. Holcombe makes no request for payment from his excellency Shên. These sums amount to 2,697.60 taels, and $2,008.88. The balance, beingthe total amount of the claims which are strictly American, is 10,093.86 taels and $5,694.37.

INTEREST.

The arbitrators decided that the claims allowed by them shou'd be paid during the month of February, 1864. Hence interest is claimed upon the unpaid balance

from March 1, 1864, to July 1,1877, at 10 per cent. per annum. Interest thus computed amounts to 14,358.48 taels and $7,592.49. The total amount of the Ward claims, principal and interest, therefore is 25,442.34 taels and $13,286.86.

KEORJEOR CASE.

The total sum of the charter money and indemnity for her loss is 54,000 taels. The steamer was seized on the 1st of August, 1863. Interest is therefore claimed at 10 per cent. per annum from that day to July 1, 1877. The interest thus computed amounts to 75,150 taels. The total sum, principal and interest, claimed for the Keorjeor steamer is therefor 129,150 taels.

CHESTER HOLCOMBE.

NANKING, *June* 21, 1877.

[Inclosure 7 to inclosure 1 in No. 290.]

Memorandum of the second interview between his excellency Shên, superintendent of southern trade, &c., and Mr. Holcombe, in regard to the Ward and Keorjeor claims.

In accordance with an appointment made at the conclusion of the first interview Mr. Holcombe presented himself at the viceroy's official residence on Saturday, June 23, at 10 a. m. The same persons were present as on the previous occasion. Mr. Holcombe opened the business by stating that he had brought with him certain of the more important of the papers in the cases under consideration, which he would be glad to have the viceroy examine. The viceroy asked whether he had brought the dispatch from Li, formerly governor of Kiangsu, in which the steamer Keorjeor was spoken of as a Chinese steamer, and her capture by the rebels reported. Mr. Holcombe replied that he had, and it was placed before the viceroy. After his excellency had examined that paper, the printed minutes of the trial in the Keorjeor case were shown him, as well as the original award of the arbitrators in the Ward claims, an original dispatch from Woo, consenting to pay certain of the claims, but repudiating others, an unofficial letter from Woo in which he stated that he had sealed and returned the agreement of submission to arbitration, a copy of the agreement itself, a letter from Woo in regard to the mode to be adopted in paying the arbitrators for their services, and sundry other papers bearing more or less directly upon the points at issue.

His excellency, after examining the papers laid before him for a considerable time, and with apparently a good deal of care, asked what was the reason for setting aside the first arbitration on the Ward claims. Mr. Holcombe answered that it was set aside because Woo complained that the arbitrators had done their work in haste and carelessly, and that as a consequence many unjust claims had been allowed, and because the consul-general on examination satisfied himself that Woo's objections were well grounded. His excellency asked whether Mr. Holcombe had brought with him the papers in the first arbitration. To this a negative answer was given, and the statement made that as it was set aside by consent of both parties, the secretary had not thought it necessary to encumber himself with the correspondence in it. Mr. Holcombe then remarked that as there were in point of fact two distinct cases to be disposed of, it would perhaps be better to take up one at a time, and suggested that the Ward claims be taken up first, and, if possible, some understanding be arrived at in them. To this the viceroy responded that it was much to be desired that these cases should both be closed, and he saw no reason why his own time and that of the secretary of legation should be given up to these matters for a month or more, to the exclusion of other and perhaps more important business. The merchants and Mr. Hill had entered into business transactions with Woo and Takee for purposes of gain, and they ought to receive what was due them. This was simple justice. While he would not assert that Woo and Takee had no reason for the course pursued by them, on the other hand he was bound to say there was justice in the claims now urged, and it was due both to the claimants themselves and to the good relations which have so long existed between the two governments that the claims be paid. He then proposed that the papers which he had just examined should be left with him for a day or two, within which time he would promise to send to Mr. Holcombe a formal proposition for the settlement of the whole business. To this Mr. Holcombe immediately assented, with no other remark than to say that the papers, being original documents, were exceedingly valuable, and the loss of any of them would involve him in serious difficulty. He trusted, therefore, that great care would be taken that none of them be mislaid. To which the viceroy answered by pledging himself that they should all be returned safely. He then proceeded to say that the Ward claims could be very easily managed, but that the Keorjeor case was more difficult. He could not see how a steamer for which, in case of her loss, only 12,000 taels was asked by her owner, who, indeed, had

agreed to sell her for 8,500 taels, could have been chartered for 3,000 taels per month. It seemed to be inconsistent and unnatural.

Mr. Holcombe replied that Mr. Hill claimed that the Keorjeor had actually cost him about 25,000 taels; that steamers of her size were scarce at that time, the risks great, and that these facts would naturally tend to increase the price of charter. Further, reliable witnesses had testified to the contents of the charter-party, and it might well be that Mr. Hill had agreed, in view of receiving a liberal hire for his vessel, to accept less than her full value in the event of her loss. The viceroy acknowledged that there might be some force in this statement, and went on to say that he had received a statement from the heirs of Woo and Takee to the effect that "Knowing that the charter-party was lost, and expecting in consequence to evade payment of the Keorjeor claim, they had hitherto denied her having been used. But now, seeing that the claim must be paid, they admitted that the vessel in question had been chartered for the Chinese Government, but they had forgotten the rate of charter and the amount of indemnity agreed upon in case of her loss." The viceroy further said that Takee's heirs, on being questioned as to whether they had got possession of the charter-party, had answered, "No; it was not stolen for us, but it must be that after Takee's death Hill destroyed it himself, hoping, in the absence of Takee's testimony and the document itself, to be able successfully to raise the amount of his claim." To this Mr. Holcombe responded that, fortunately, the evidence of witnesses who had seen the document sufficiently established its contents. The viceroy then reiterated his promise to send a formal proposition looking to the settlement of the whole business in a day or two, and asked that in the mean time Mr. Holcombe would send him any further papers he might have, particularly those bearing upon the setting aside of the first arbitration. This Mr. Holcombe promised to do.

In taking leave of the viceroy, he apologized for asking for the day or two of delay, and invited Mr. Holcombe, and through him the officers of the Palos, to visit the Ming tombs, the ruins of the porcelain tower, the arsenal, or any other points of interest in the neighborhood.

CHESTER HOLCOMBE.

NANKING, *June* 23, 1877.

NOTE.—It is impossible to account for the sudden change in the viceroy's tone between the two interviews upon any other supposition than that in the interval he had received the reports which he said he wanted from Shanghai. It is known that a steamer from that port landed a mail at Nanking at four o'clock in the morning of the day of my second visit.

C. H.

[Inclosure 8 to inclosure 1 in No. 290.]

Mr. Holcombe to his excellency Shên.

NANKING, *June* 25, 1877.

Yesterday, while at your office, I had the honor to place before you the original award of Messrs. Cunningham and Hanbury, the arbitrators in the case of the so-called Ward claims. This document was in English, of which I fear your excellency may not be able to secure a perfect interpretation. I have, therefore, the honor to hand you herewith the Chinese translation of the same. At that interview your excellency expressed a desire to see other papers bearing upon the cases in hand, and I beg therefore to hand you eight other documents, which, together with those left with you yesterday, I beg may be returned when you have sufficiently examined them.

I have, &c.,

CHESTER HOLCOMBE.

[Inclosure 9 to inclosure 1 in No. 290.]

WARD CLAIMS.

Memorandum from his excellency Shên.

1st. The late Woo, Taotai, should have paid in full the claims of the several foreign merchants.

The late Taotai Woo held that Ward & Benson had received large sums of money, which if properly applied to public uses there would have been no unpaid bills with the foreign merchants. In this position he was not without some justification. But Ward was already dead, and the fraud was the act of Benson alone; and thus the sev-

eral foreign firms would, from no fault of their own, suffer hardship. Hence the late Taotai Woo, being the commander-in-chief of the Ward corps, should have paid in full the sums of 10,903.86 taels and $5,694.37, being the amount justly due and owing.

2d. The late Taotai Woo should not pay interest.

The amounts mentioned above represent the moneys due to but not received by the foreign firms; but these sums have been paid already by the late Taotai. Hence the payment of them now by him is in point of fact suffering for the wrongs of others. The further addition of interest cannot be claimed, either in justice or equity. Further, the decision of the arbitrators is not consistent with the consideration of this point between us.

3d. The late Taotai Woo may not seek to recover the money received by Ward.

Ward had received 270,000 taels from Woo. Of this there is documentary proof. If Ward were still living he ought to account for item by item. Since he lost his life in the service of China, his indebtedness may be remitted as a token of reward for his faithfulness.

4th. Benson should be pursued for the amount embezzled by him.

Bensen embezzled to the amount of more than 30,000 taels. Not only did the late Taotai repeatedly assert this, but the arbitrators state that Benson's accounts were not clear and satisfactory. It was as if the Ward corps were a shop in which Woo was the proprietor and Benson his assistant. The proprietor furnished his assistant funds with which to pay all sums due by his shop to other firms, and the assistant misappropriated these funds. If the proprietor should refuse to acknowledge the claims, and thus force the other firms to suffer loss, this would not be just. Neither would it be right simply to hold the proprietor responsible and not call his assistant to account. When the heirs of Woo, taotai, have paid the claims in question, then it should be a matter for consideration by his excellency Mr. Seward how to secure the restitution by Benson of the sum appropriated by him. If he has no resources from which to recover the amount, then he should be punished according to American law, and the fact reported to the Chinese foreign office. This would be in accordance with justice, and would comfort the spirit of Woo.

[Inclosure 10 to inclosure 1 in No. 290.]

KEORJEOR CLAIM.

Memorandum by His Excellency Shên.

1st. The charter of the Keorjeor by Yang Takee.

In the hiring of land, buildings, or vessels it has been the invariable custom to execute a lease, in order that disputes may afterwards be avoided by this documentary proof. The refusal of the Shanghai intendant to decide that Yang Takee should pay Hill's claim, in the absence of a charter-party, was strictly in accordance with law. But the undersigned has made careful inquiry at Shanghai, and officials and merchants all testify that the steamer was chartered by Yang Takee. And there is also a dispatch from the Grand Councillor Li in which are the words "the Chinese steamer Keorjeor." Thus the steamer was not only chartered by Yang Takee, but was evidently afterward sold to him.

2d. The claim of 3,000 taels per month charter-money is fraudulent. Merchants use their capital to secure a profit. The two bear each a certain relation to the other. Although the profit vary according to the times, it never exceeds the capital. The price of the vessel in question was 12,000 taels, but a year's profit from her charter would amount to 36,000. Without discussing whether Yang Takee, who had been in business all his life, would consent to such a loss as this, would Hill consent to sell a steamer which produced for him 36,000 taels per annum for the sum of 8,500 taels? The undersigned has caused strict inquiry to be made among officials and merchants at Shanghai, all of whom declare that Yang Takee was on the most intimate terms with Hill. But very few persons ever saw his charter-party, but they had heard that the charter-money was either $500 or 500 taels per month. Reckoning it according to the largest sum mentioned, that is to say, at 500 taels per month, then in each year what Hill received would amount to half the original value of his vessel. This may certainly be considered a very large return.

3d. No interest should be allowed on the charter-money.

According to Hill's statement, his charter-party was kept in the iron safe at the United States consulate, and he does not know when it was lost.

It appears that the consulate named has never suffered from water, fire, or thieves. How, then, can this charter-party have been lost? The undersigned has carefully examined the history of this case. It appears that when Hill first brought claim against Yang Takee it was at the latter's own request. This fact shows out Yang Takee's evil

disposition in a degree patent to all, Chinese or foreign. At the time the late Taotai Woo had only Yang Takee's words. The latter, since in international business there were few witnesses to his transactions, defrauded at his pleasure. But, little by little, Woo, taotai, discovered that Yang was dishonest and that he had persuaded Hill to bring claim against him in order to cover up his fraud. But Hill discovered his secret plan, and decided that if he should actually claim against Yang Takee the sum which he had fraudulently reported, Yang would not dare dispute him. Hill did not think that, should Yang Takee require the production of the charter-party, it would not correspond with his demand. He wanted to produce it but dare not, and thus was developed this case, which seems so strong and not possible of solution. Yang Takee did not dare confess, and Hill dares not.

But the case need not be settled on this basis. Granted that the charter-party is lost. The loss and the consequent delay in settlement is Hill's own fault. Since he is to receive his charter-money, he cannot besides that claim interest. Call the monthly charter 500 taels. From the date of charter to the date of the sale of the steamer to Takee was thirteen months, making the charter-money amount to 6,500 taels.

4th. Interest in full should be allowed on the purchase-money of the steamer. It was sold in July and seized in August. Yang Takee himself lost the steamer. (It was his at the date of its loss), hence Hill cannot claim indemnity. But if, after the sale was agreed upon, Takee had paid the money for it, Hill would have handed over the bill of sale, and how could it have been lost? Since after the bill of sale was executed Yang Takee did not pay the money, interest should be allowed on it. The claim that there was no bill of sale delivered cannot be allowed; and since the vessel was lost after her sale to Yang had been made, the claim that no vessel was actually delivered to him cannot hold.

From July 1, 1863, to July 1, 1877, is exactly fourteen years. Her price was 8,500 taels; for each year add 850 taels interest, and the sum total of principal and interest is 20,400 taels, which must be paid in full by Yang Takee, without abatement or deduction of any sort.

Memo.

The sum total proposed by his excellency to be paid on the Keorjeor is:

	Taels.
Charter-money	6,500
Price and interest	20,400
Total taels	26,900

C. H.

[Inclosure 11 to inclosure 1 in No. 290.]

Memorandum in the so-called Ward and Keorjeor claims.

1. His excellency Shên Poachen, in the so-called Ward claims, acknowledges, on behalf of his government, indebtedness to the extent of 10,903.86 taels and $5,694.37 as principal, and 14,358.48 taels and $7,592.49 as interest.

2. In the so-called Keorjeor claim, as there is a difference of opinion as to the amount which is actually due and owing, it is understood and agreed as a compromise that his excellency Shên Poachen, on behalf of his government, acknowledges indebtedness to the extent of 100,000 taels, and the secretary of legation agrees on behalf of his government to accept this sum as payment in full, subject to the following conditions, to wit: That this compromise is conditioned upon the approval of the United States Government for the term of forty-five days from the date of this paper of agreement, within which forty-five days the said secretary of legation shall, if so instructed by his government, be at liberty to renew claim for balance up to the full sum claimed as due and owing.

3. His excellency Shên Poachen agrees to make payment in full of the sums above acknowledged as due and owing upon the 1st day of July, 1877, to Mr. Holcombe.

4. It is agreed that the taels mentioned above shall be the Haikwan tael of pure silver, and the dollar shall be clean Mexican.

5. Upon receipt in full of the sums named above the secretary of legation agrees on behalf of his government to give a quitclaim acknowldgement. He further agrees that the so-called Ward and Keorjeor claim cases shall therefrom be considered and held to be settled and closed forever, and that no further demands shall be made under them.

CHESTER HOLCOMBE.

NANKING, *June* 27, 1877.

[Inclosure 12 to inclosure 1 in No. 290.]

Memorandum of interview between His Excellency Shên and Mr. Holcombe upon the so-called Ward and Keorjeor claims.

THURSDAY, *June* 28, 1877.

At 4 o'clock p. m. Mr. Holcombe presented himself at the viceroy's official residence and met his excellency; his official secretary and interpreter being also present.

Mr. Holcombe introduced his business by laying before his excellency a memorandum upon the Ward claims in rejoinder to the one submitted by the latter upon the preceding day. His excellency said the settlement of these claims seemed to be exceedingly difficult, as he could not consent to allow any interest upon them. He fully admitted the justice of the claims, and would see that the heirs of the late Intendant Woo made immediate payment. But as Woo had already made full payment once to Benson, who had fraudulently applied the moneys to his own use, it would not be justice to require Woo's heirs to make payment a second time, with interest added.

Mr. Holcombe called the viceroy's attention to the fact that by the terms of arbitration agreed to between the late Woo, taotai, and the consul-general, Mr. Benson's accounts, and Woo's statement were submitted to the arbitrators, and they had explicitly declared that Benson was not guilty of fraud, and that he had expended the funds received by him on account of the Chinese government, and, further, that none of these moneys had been used to pay bills decided by them as due and owing.

His excellency said that the arbitrators declared that Mr. Benson's accounts were unsatisfactory and incomplete, so far as vouchers were concerned, and added that this was tantamount to a decision of fraud against him.

Mr. Holcombe admitted that the arbitrators did declare that Mr. Benson's documents were incomplete and unsatisfactory, but said that so far from deciding that he had been guilty of misappropriation of funds, they had explicitly declared that he had expended the moneys received by him for the Chinese Government, which was a plain declaration that he was not guilty.

Mr. Holcombe then went on to say that he could not consent to reopen points which had been decided by the arbitrators years ago. The consul-general had acted in good faith in submitting all the questions involved in the Ward claims to arbitration. If Messrs. Cunningham and Hanbury had adjudged Benson guilty of fraud, there is no reason to doubt that he would have been pursued and dealt with. If the arbitrators had decided that the sums now claimed were not honestly due, no claim would have been put in for them. But the award must be accepted as final, and no question which touched its validity could now be considered by him. The viceroy's secretary remarked that neither of the arbitrators were Chinese. Mr. Holcombe answered that he could not discuss that point. Woo had accepted the composition as well as the terms of the arbitration. The viceroy added that Mr. Holcombe was right, and that there was no use in raising such a point. The secretary of legation then proceeded to say that the only question remaining for consideration was that of interest.

His excellency had conceded that the unpaid balance of the arbitration award was justly due the claimants, and must be paid them, and the question was whether persons who had been kept out of the use of money honestly belonging to them for more than thirteen years, some of whom had been in actual distress for lack of it, were not in simple justice entitled to a fair rate of interest. He added that while he was ready to discuss in a reasonable spirit the question as to what rate ought to be allowed, he must say frankly that it was impossible for him to accept a settlement which did not include an interest allowance. His excellency the viceroy then said that he could not allow any interest whatever. Mr. Holcombe asked whether his decision on this point was final. The viceroy answered, "Yes, final and absolute." Mr. Holcombe then said that much as he regretted it, he must consider the negotiations, so far as the Ward claims were concerned, as ended, since it was contrary to his instructions, as well as to his own sense of justice, to accept such a settlement. Mr. Holcombe then asked if the viceroy also adhered to the terms of his memorandum in regard to the case of the Keorjeor. The viceroy answered in the affirmative, and went on to say that he was entirely satisfied that the steamer was chartered by Yang Takee for the Chinese Government; though all the world denied it, still he was sure of the fact. But he could never admit that a steamer for which the owner was ready to accept 8,500 taels could have been chartered for 3,000 taels per month. He believed that Yang Takee and Hill had been in collusion to defraud the government. Mr. Holcombe replied that there was reliable testimony to the existence and contents of a charter-party, and, further, that evidence had been given by a man whose knowledge and experience regarding the value of the services of such steamers at the time in question was certainly equal to that of any other person in China; that, considering all the circumstances, the charter-money was not excessive. Mr. Holcombe added that he referred to Mr. Cunningham, of Messrs. Russell & Co., whose evidence was given at the trial. He went on to say that it might naturally be that the sale of the steamer at a very low price was conceded to by her owner from the very fact that she had earned a good sum by her char-

ter. As to the price of the Keorjeor, granting that Mr. Hill had agreed to sell her for 8,500 taels, still the arrangement had not been carried out, as Takee had not paid the money, and hence the sum estimated for the loss of the steamer must be that agreed upon for the charter-party, namely, 12,000 taels. The viceroy responded that he could not allow it, that Hill had agreed to sell her for 8,500 taels, and he could not claim more, but that he could fairly claim interest on that amount as it had not been paid. As to the charter-money, he could not believe that there ever had been a case where a steamer valued at 8,500 taels earned 36,000 taels per annum, and he could only allow 500 taels per month charter-money. Mr. Holcombe asked why interest was allowed on the price of the Keorjeor, but not upon the charter-money. The viceroy answered that it was because the charter-party was lost, adding that if the charter-party was produced he would allow interest on the charter-money, but with or without that document he would only allow charter-money at the rate of 500 taels per month. He added that if the original of the agreement to arbitrate in the Ward claims were shown him he would allow interest on the balance due. Mr. Holcombe reminded the viceroy that he had already been shown a copy of that agreement and certain original letters from Woo, in which the fact that he had officially sealed the paper in question was plainly stated, but unfortunately the original document could not be found. The viceroy said that he did not recognize either of the claims as in any sense valid against the Chinese Government, but only against the heirs of Woo and Takee, and was willing to enforce their payment upon the terms stated, but upon no other. Mr. Holcombe, after asking whether this decision was final, and receiving an affirmative reply, said, that much as he regretted it, this decision of his excellency left him no alternative but to close the negotiation and report to his superiors for such action as they might see fit to take. After the usual courtesies the interview closed.

CHESTER HOLCOMBE.

NANKING, *June* 29, 1877.

[Inclosure 13 to inclosure 1 in No. 290]

WARD CLAIMS.

Memorandum handed to his excellency Shên, June 28, *in rejoinder to his of the* 27*th.*

1. The undersigned accepts with satisfaction the declaration of his excellency that the unsettled balance of the so-called Ward claims should be paid in full.

2. The statement of his excellency that no interest should be allowed cannot, he regrets to say, be accepted by the undersigned. The decision of the arbitrators was to the effect that the claims should be paid in the month of February, 1864. For more than thirteen years they have remained unpaid. And hence they stand substantially in the light of a loan by the claimants of their respective amounts to the Chinese Government; and they form no exception to the rule universally accepted, that money loans, whether loaned to governments or individuals, shall secure a reasonable rate of interest.

3. The undersigned regrets to say that he cannot consent to his excellency's statement that the Government of the United States should pursue Mr. Benson for the sum of 30,000 taels and upwards, in which amount it is claimed by his excellency that he is a defaulter. The late Woo, taotai, agreed with the United States consul-general to submit the charges made against Mr. Benson to the arbitrators, who, after careful examination, adjudged him innocent of fraud. Hence no agreement can be made under which he is to be pursued.

4. In regard to his excellency's statement that the Ward claims must be paid by the heirs of the late intendant Woo, the undersigned has already informed his excellency, and now desires to reiterate it in the plainest manner, that the United States is not pursuing the heirs of the late Woo, but the Government of China.

The question whether the Chinese Government shall take recourse against the heirs of the late intendant, for the whole or any part of the sums claimed, is therefore of no concern to the United States.

CHESTER HOLCOMBE.

NANKING, *June* 28, 1877.

[Inclosure 14 to inclosure 1 in No. 290.—Official.]

Mr. Holcombe to his excellency Shên, &c., &c.

NANKING, *June* 29, 1877.

SIR: I have the honor to recur to our several conversations upon the so-called Ward and Keorjeor claims, and more particularly to the memorandum proposition which

your excellency handed me by your official secretary upon the 27th instant, and to our conversation thereupon of yesterday.

I understand that the memorandum referred to declares the validity of the Ward claims as good against the heirs of the late Intendant Woo up to the full amounts claimed by the United States, that is to say, to the amounts of 10,903.86 taels and $5,694.37; that it does not admit the claim for any interest whatever upon these sums; and maintains that the United States authorities should pursue Benson and either recover from him the sum, amounting to upward of 30,000 taels, which the late Intendant Woo claimed to be due from him or to punish him according to our laws. In the Keorjeor case, I understand your excellency's memorandum to declare that the steamer was chartered by Yang Takee for the Chinese Government; to deny that the charter-money was 3,000 taels per month; to admit a claim for her charter at 500 taels per month for thirteen months, and for her value at 8,500 taels; to allow interest upon her value for fourteen years at 10 per cent. per annum; to refuse the claim for interest upon the charter-money; and to state that the amounts thus admitted are good as against the heirs of Yang Takee. In our conversation of yesterday I understood your excellency to reiterate substantially the propositions contained in your excellency's memorandum, to say that you could not allow that these claims were in any sense valid against the Chinese Government, but only against the heirs of Woo and Takee; and to say that you were unable to make or give your consent to any proposition for a settlement of these claims which would involve further concessions on the part of your excellency than those contained in the memorandum sent me.

I beg leave to request that your excellency will kindly inform me whether in the above statement I have correctly represented your excellency's views and the position maintained by you in this business, in order that I may make the necessary report to the United States minister, and through him to the Government of the United States.

As I have public business awaiting my attention elsewhere, I shall be greatly obliged if your excellency can favor me with an immediate response.

I have, &c.,

CHESTER HOLCOMBE.

[Inclosure 15 to inclosure 1 in No. 290.]

Mr. Holcombe to his excellency Shên.

NANKING, *June* 29, 1877.

The undersigned is intending to leave this place to-morrow afternoon, and proposes to call upon your excellency to take leave at 10 o'clock a. m. He begs leave to inquire whether it will be convenient for your excellency to receive him at that hour.

Card and compliments.

CHESTER HOLCOMBE.

[Inclosure 16 to inclosure 1 in No. 290.]

His excellency Shên to Mr. Holcombe.

NANKING, *June* 29, 1877.

I have just received your note, and am very sorry to learn from it that, as you have business elsewhere, you propose leaving here to-morrow. I beg of you to do me the honor to call upon me to-morrow at ten o'clock, at which hour I shall expect you.

With card and compliments.

[Inclosure 17 to inclosure 1 in No. 290.]

His excellency Shen to Mr. Holcombe.

Shên, southern superintendent of trade, viceroy of the Two Kiang, &c. &c., herewith makes a communication in reply:

I have had the honor to receive your dispatch in the Keorjeor and Ward cases, in which you recite in detail the points taken by me in our conversations, &c., and request me to give it my careful examination, in order that, if I find no errors in it, you may communicate it to your superiors, and in which you request an early reply, &c., &c.

In response, I beg leave to say that the several points are stated by you correctly. I have handed you in the two cases two memoranda, in which are recited in detail my reasons for deciding that the claims in question should be paid, and the item of the claims on which I am willing to allow interest. I have the honor to request that you will make these two memoranda a part of your report to your government.

With regard to the debts of Woo and Takee, their heirs should be made to pay them. but if you are desirous of closing the business immediately, I can instruct the customs intendant at Shanghai to advance the necessary funds, and afterwards recover them from the heirs named.

I have to request that you will also forward this proposal to advance the funds, together with your report.

I beg your attention to this my reply, &c., &c., &c.

NANKING, *June* 30, 1877.

[Inclosure 18 to inclosure 1 in 290.]

Mr. Holcombe to Lieutenant-Commander Wise.

SHANGHAI, *July* 2, 1877.

SIR: I beg leave to present to you, and through you to the subordinate officers of the United States ship Palos, the expression of my most sincere and heartfelt thanks for your very kind services in connection with my recent visit to Nanking.

Through your most considerate and thoughtful attentions, the journey was not only relieved of all discomfort, but made one long to be remembered with pleasure and gratitude.

I have, &c.,

CHESTER HOLCOMBE,
Secretary of Legation.

No. 27.

Mr. F. W. Seward to Mr. G. F. Seward.

No. 180.] DEPARTMENT OF STATE,
Washington, August 27, 1877.

SIR: Your dispatch of the 7th of July ultimo (No. 290), in relation to the claims against the Chinese Government, known as the Ward and Keorjeor claims, and inclosing a copy of Mr. Holcombe's report to you, giving the result of his negotiations with the Nanking authorities, has been received, and was submitted to the law-officer of the department for report.

I transmit herewith a copy of that officer's report, and it is desired that, while you continue your efforts in behalf of the claimants, you will be guided as far as possible by the suggestion of the report in question.

I am, &c.,

F. W. SEWARD,
Acting Secretary.

[Inclosure in No. 180.]

BUREAU OF CLAIMS, *August* 23, 1877.

Subject: The Ward claims against China; and also Mr. Hill's claim relative to steamer Keorjeor. Mr. Seward's No. 290, July 7, 1877.

Mr. Seward was recently (February last) instructed in regard to these claims, and especially that of Mr. Hill. Pursuant to these instructions, he sent Mr. Holcombe, secretary of legation, to Nanking, with a view of negotiating a final settlement of the claims with the viceroy of that province. His present dispatch is a report of the results. He transmits a copy of Mr. Holcombe's report to him. Mr. Holcombe's report of his negotiations with his excellency Shen, the viceroy, who, it appears, is also southern superintendent of trade, is very full and complete, and the result, although not all that could be desired, must be considered a great success, promising a speedy settlement of the claims.

The viceroy admitted the validity of the Ward claims, but at first denied the liability of the Imperial Government. This point was at last yielded, and he agreed to rec-

ommend the payment of the principal, but would not agree to pay interest, which is now a large sum, having run thirteen years. The same admissions were made in regard to the Hill claims for "Keorjeor," the viceroy finally saying that if Mr. Holcombe would agree to take the principal of both claims, he thought it could be paid in forty-eight hours, and these matters finally disposed of.

Mr. Holcombe did not feel at liberty to accept these terms, but submitted them to Mr. Seward. Mr. Seward considers the progress thus made by an acknowledgment of the validity of the claims a very important step in advance toward an early and final settlement, and thinks, with so much conceded, he will be able to secure better terms.

As the claimants are all in China and Mr. Seward has done so well with the matter thus far, I think his course should be approved and discretion given him to settle on the best compromise he can get, upon obtaining the consent of the claimants to any settlement for a less sum than the principal and interest.

Respectfully submitted.

HENRY O'CONNOR.

No. 28.

Mr. Seward to Mr. Evarts.

No. 307.] CHEFOO, *July* 26, 1877. (Received September 7.)

SIR: Mr. Holcombe returned to this port from Nanking and Shanghai on the 16th instant, and on the 24th he left for Peking to attend there to various matters, as will appear in this and other dispatches.

I have already informed you that his negotiation with the viceroy at Nanking in regard to the Ward and Keorjeor claims was not entirely successful, and transmitted to you a copy of his report.

You will have noticed that the viceroy admitted completely the validity of the Ward claims. It may be considered that this marks a great advance in the negotiation.

It is more than fourteen years since I presented these matters to the legation, and it is only now that the Chinese have been brought to acknowledge the justice of our representations. With characteristic inconsistency, however, the matter of interest has been left for a further contention.

As the claims in question were passed upon by arbitrators who decided that they were just and should be paid, during the month of February, 1864, I have considered that we are entitled to claim interest from the 1st of March of that year, and have prepared a memorandum for the foreign office in this sense, a copy of which I inclose. I have mentioned ten per centum as the rate to be claimed, because that is the rate admitted by the viceroy in his memorandum on the Keorjeor case. It is moreover the rate of interest which the government has agreed to pay on a loan of 5,000,000 taels which they have just concluded.

This memorandum will be handed by Mr. Holcombe to the foreign office. I have instructed him in a letter, of which I hand you a copy, to say that if interest be refused as claimed, he must withdraw, and that there will be nothing left for us but to report the refusal to you. I have given to Mr. Holcombe also a memorandum on the Keorjeor case. This he is not to present, or at least he is not to have any discussion over it, if interest be refused in the other matter.

You will remark that I have presented in this paper the points upon which we rely in support of Mr. Hill's claim for the charter of his vessel at 3,000 taels a month, and for indemnity for her loss at 12,000 taels, and have insisted upon payment of the sum of 54,000 taels (say $72,000) thus accruing. In doing this I understand that I have the full support of the department, and I believe that the case so far is a just and good one.

Whether, however, a claim for interest since the principal sum stated fell due can be supported, is open to question, and fuller reflection has made me think it unwise to advance anything like a positive claim in this direction.

Mr. Hill has throughout conducted his business as if he was dealing with a private individual, and as against the individual he would be entitled of course to full interest. Mr. Fish instructed me, however, that the claim is properly one against the government. I think the instruction a sound one, and with Mr. Hill's approval have so presented it.

If, then, we elect to pursue the Government, we ought not, perhaps, to claim for interest anterior to the moment when we brought the matter to their notice. There is much to be said in regard to this proposition pro and con, but I do not desire to argue the case at this moment or ask for an instruction upon it. It would not, perhaps, be fair to Mr. Hill to do this without giving him an opportunity to present his view of the matter, more particularly as he expresses strongly the opinion that he is entitled to interest at full rate for the whole time since the loss of his vessel. In this condition of the business I have contented myself by preparing for Prince Kung a statement touching the sum due to Mr. Hill as principal, inviting him to state his views in regard to the question of interest. If he does this, I will ask Mr. Hill for a similar statement and transmit the respective cases to you for your instructions.

You will consider, I think, that I have taken the only course open to me in this matter as well as in that of the Ward claims. The admissions of the viceroy in both cases reach so far that it would be difficult to say that a denial of justice is to be feared, while on the other hand these admissions bring the business into a new position, and raise questions which we have not before discussed. The denial of interest in the Ward claims cannot be assented to for a moment, but the refusal of interest, and indeed the reduction of the principal sum due to Mr. Hill, is on a somewhat different footing. There is, indeed, much force in what the viceroy advances in the latter case, and it would not have done to have failed to respond to his arguments.

I trust to receive your approval for the course that I have taken, and

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 307.]

Mr. Seward to Mr. Holcombe.

CHEFOO, *July* 23, 1877.

SIR: Your mission to Nanking in connection with the Ward and Keorjeor claims having failed of the full measure of success expected, I think it well to request you to return to Peking to speak with the foreign office about the business.

It does not seem necessary for you to refer in your conversation with the ministers to any grievance which we may have in connection with the reference to Nanking and its failure.

I inclose two memoranda, which you may take in your hand when you go to the Yamen. You will do well to find an opportunity to leave copies of them with the ministers, but it will be better to do this somewhat formally, so that they may be considered a part of the record.

You should take up the Ward claims first, and after a courteous presentation of the case in its present aspect say that we cannot consent to forego interest.

If the ministers will agree to send orders to Nanking of a satisfactory sort, you may pass on to discuss the Keorjeor case, but not otherwise, saying in the event of their refusal in the case of the Ward claims that it is impossible for us to hope for a good result of discussion of the other matter.

In taking up the Keorjeor case after the matter of the general claims has been disposed of do what you can to urge upon them the strong points in Mr. Hill's case, as set

forth in the accompanying memorandum. If they will not move from the viceroy's proposal, say that you have nothing left but to withdraw; but if you can get a proposal from them of a more favorable sort—one, for instance, for the payment as principal of 54,000 taels, the matter of the interest to be left for future consideration, you may close with it, making it clear that this sum is accepted only pending reference to our government, and subject to further discussion of the question of the responsibility of the Chinese Government in the matter of interest, if this should be requested.

I think it very desirable for you to lead them to make a proposal, and not to advance any on our side which may embarrass us hereafter.

We have conversed so fully about these matters that more extended instructions do not seem necessary.

I have, &c.,

GEORGE F. SEWARD.

P. S.—Further reference to Nanking is not to be permitted, unless upon assurances which may seem to you satisfactory in view of all that has occurred and these instructions.

G. F. S.

[Inclosure 2 in No. 307.]

THE WARD CLAIMS.

Memorandum of July 23, 1877.

The viceroy at Nanking admits "that the late Taotai Woo should have paid in full the claims of the several foreign merchants." He admits also "that the sums which should have been paid are 10,903.86 taels, and $5,694.37." These would be payable at Shanghai in Shanghai sycee and clean Mexican dollars.

The amounts were declared due and payable in the month of February, 1864, by the arbitrators, Cunningham and Hanbury.

Having been so adjudged to be due there is no consideration of law, of international usage, or of equity, which can relieve the Chinese Government from the payment of interest.

Interest may be calculated at 10 per centum, the rate proposed by the viceroy at Nanking on the so-called purchase-money of the steamer Keorjeor.

The remarks made by the viceroy about amounts due from Ward's estate and Mr. Benson need no special comment, having been fully discussed with the foreign office. I must protest, however, against statements which reflect upon the good name of the deceased General Ward and upon Mr. Benson. I have the right to do this in view of the award of the arbitrators to whom the claims against Ward's estate and Mr. Benson were submitted.

G. F. S.

CHEFOO, *July* 23, 1877.

[Inclosure 3 in No. 307.]

THE KEORJEOR CASE.

Memorandum of July 23, 1877.

The viceroy at Nanking admits the use of the steamer for a period of fourteen months, but claims—

1st. That the alleged rate of charter is excessive.

It is to be remarked that a contract is not to be set aside because one or the other of the party considers that his bargain is not the best which could have been made.

The fact of a contract having been made cannot now be disputed. It is admitted that the steamer belonged to the claimant and that she was used for the purposes of the Chinese Government. These circumstances imply that she was used by agreement.

The memorandum of the viceroy no less than the evidence adduced at Shanghai, and otherwise, shows that the contract was made between Hill and Takee.

It is to be said at once that contracts for the use of vessels are executed in duplicate one part being held by the charterer, the other by the owners. If then the charter-party in this case did not provide the rate of charter stated by the claimant, why does not the defense produce the second copy of the document and set the matter at rest? The Chinese Government should not regard with complacency the conduct of Takee's

people in this respect. It has led to a long diplomatic contention, which would have been unnecessary if they had produced the paper.

It is to be remarked again that the evidence of the claimant in regard to the rate of charter is not uncertain. It is sworn to by the claimant as shown at pages 2 and 13 of the printed minutes of the court held at Shanghai; by Mr. Jenkins, as shown at pages 17 and 19; by Colonel Forester at pages 27 and 28; and by Mr. Rodgers in his affidavit transmitted to the foreign office with my dispatch of March 5.

The arbitrators first chosen have both sworn that the charter-party was in their hands when they were examining the claims presented to them. Evidence that their sworn evidence as to the contents of the document is correct is afforded by the fact that the rate of charter is stated in the award made by them at the time at 3,000 taels a month.

Further evidence is found in the fact that General Burgevine approved Mr. Hill's account at that rate, as shown at page 42 of the printed book. The account presented to the arbitrators Cunningham and Hanbury was at the same rate and was not objected to on that score, but because the charter-party was not produced.

It is to be remarked again that there is abundant evidence that the rate was not excessive. Reference on this point may be made to the sworn statement of Captain Rouse at page 25 of the printed book; of Mr. Cunningham at page 35; of Mr. Miller and Mr. Westall at page 37. Of these gentlemen it may be said tLat Mr. Cunningham was president of the Shanghai Steam Navigation Company and knew the general market-value of vessels; and that Mr. Miller and Mr. Westall were merchants dealing in silk and knew the value of vessels which, like the Keorjeor, were suitable for navigation of the canals of the silk district.

It is to be remarked again that the value of the Keorjeor for military purposes might not depend at all or greatly upon her cost or her value for ordinary use. If she could be made use of to facilitate military operations she might not have been dear if she had been taken at two or three times the rate claimed. That she was specially useful to the Ward corps is shown in the evidence of Mr. Ashley, at page 21 of the printed book before mentioned; of Captain Rouse, at page 25; of Colonel Forester, at page 34; of Mr. Miller and Mr. Westall, at page 37; of Colonel Rohde, at page 38; of Mr. Howgate, at page 40; and of Major Silverthorne and Mr. McLaughlin, at page 41. It is to be remarked again that the sum fixed in the charter-party as the indemnity to be paid in case of loss does not necessarily indicate the value of the vessel. She might have cost that sum, but have been worth far more at the moment when she was chartered, which, as has been indicated, was a time of war, when such craft were for various reasons in demand. In point of fact the claimant asserts that she cost him twice the indemnity sum. His evidence on this head is given at page 13 of the book before referred to. The placing of a low rate of indemnity might have been, moreover, an inducement to the charterers, who perhaps were not in position to estimate the risk attending her use so well as the claimant.

It is to be remarked again that the sum of 8,500 taels is still less to be taken as the value of the steamer. At the time when she was offered to Takee at that sum a large amount was due on the charter. It was an object to the claimant to settle up the business, and not surprising that he was prepared to reduce his demands somewhat if he could procure the prompt payment of all that was due to him.

Looking to all these considerations it is not supposed that the government will adhere to the viceroy's refusal to settle the claim on the basis on which it has been always presented by us.

2d. The viceroy insists that the steamer was Takee's property when she was lost, under the claimant's agreement to sell at 8,500 taels, and that thirteen months' charter money only is due and the purchase-money just stated.

It is to be remarked that the viceroy is not entirely just when he accepts a part of the agreement between the claimant and Takee and rejects the balance. The claimant was to receive all the charter-money then due, at 3,000 taels a month, say more than 36,000 taels, and the agreed sum of 8,500 taels in addition. If now the viceroy had offered to close on this basis he would have been more nearly just, but when he asked that the claimant be put off with, say, 6,000 and 8,500 taels the case is quite different.

In point of fact, however, we have nothing to do with the agreement to sell at 8,500 taels. The money was not paid and the contract was incomplete. To insist upon it would be as if a man should sell an article to another for a given price and then claim his money irrespective of the right of delivery of the article or the lapse of time. As the amount of interest on this claim is very large, and the Chinese Government may consider that there are reasons why they should not be expected to pay the full sum demanded, a statement of their views on the subject may be invited.

G. F. S.

CHE FOO, *July* 23, 1877.

No. 29.

Mr. Seward to Mr. Evarts.

No. 324.] CHE FOO, *August* 11, 1877. (Received September 24.)

SIR: I have the honor to hand to you herewith a letter in regard to the Ward and Keorjeor claims, which has been addressed to me by the foreign office under date of July 26. It came to hand after Mr. Holcombe had left this city for Peking. This communication was written in response to a brief note which I addressed to the foreign office soon after Mr. Holcombe's return from Nanking, stating that the reference to the viceroy of the Kiang provinces had failed to satisfy our just expectations, and that he would proceed to Peking to speak of the business with the foreign office.

You will observe that the ministers urge that the viceroy at Nanking has greater facilities for the adjustment of the cases than those within their control, and that a change of place will only result in additional confusion.

I transmit also a minute of a conversation held by Mr. Holcombe with the viceroy at Tientsin on the 26th of July, having reference to the same matters. The subject was introduced by the viceroy. It shows that he had been made acquainted with the conclusions of his Nanking colleague; and that he declared that they are just and should be accepted by us.

I transmit also the notes of conversation held by Mr. Holcombe with the ministers of the foreign office on the 30th July and 1st August.

You will not fail to remark that these interviews did not result satisfactorily. The ministers entirely refused to assure Mr. Holcombe that orders would be given to the viceroy to grant interest on the Ward claims, or to close the main question in the Keorjeor case by paying the sum claimed by us as principal.

The language held by the ministers will be indicated by the remarks made by Tung-ta-jen in an early part of the first interview, as follows: "The viceroy at the very outset of the negotiation had admitted a certain liability, which, were the discussion to continue a hundred years, the foreign office would never admit; the viceroy has been influenced, not by a strict sense of justice, but by regard for the good relations between the two governments. According to Chinese law none of these claims could be collected. The offers made at Nanking were liberal and should have been accepted. The viceroy had made a liberal proposition, and it now only rests with Mr. Seward to close up the business. If he does not it will not be the fault of the viceroy or of the foreign office, but of Mr. Seward."

It is true that at the close of the interview of the 1st August, Shen-ta-jen, the senior minister present, said that they "would send a careful report of the two conversations, and Mr. Seward's memoranda, to the viceroy, with an instruction to settle the case at once upon terms which would be satisfactory." This, however, was in effect the precise promise made to us before Mr. Holcombe was sent to Nanking; it was not accompanied by any acknowledgment of error on the part of the viceroy, or statements of readiness to give the viceroy positive instructions upon the points raised by us. On the contrary, Tung-ta-jen, one of the oldest and most influential members of the ministry, repeated to the last his declaration that "the claims must be settled at Nanking," and that the foreign office "could discuss them for an hundred years, but would never settle them."

Upon reference to my instructions to Mr. Holcombe you will remark

that I requested him to say to the ministers that we could not consent to a further reference to Nanking, unless—

1st. The foreign office would agree definitely to instruct the viceroy to allow interest on the Ward claim.

2d. They would instruct him to admit Mr. Hill's claim for 54,000 taels as the principal due to him, the matter of interest to be left for further consideration.

As Mr. Holcombe was unable to secure such assurances, he was right in declaring that "he felt sure that my decision would not be in favor of a second mission to Nanking." Since his return I have, as a matter of course, informed the foreign office that I decline to carry the business again before the viceroy. I inclose a copy of my letter.

You will remark upon perusing this letter that I have spoken with a certain rigor. I have done this for several reasons. I am positive in my opinion that the difficulties advanced by the foreign office ought to be considered vexatious; they have haggled over the negotiation at every step, disputing with me propositions over which they should never have raised any questions. They have not given us the slightest help in the whole course of the matter. It is entirely certain that the local authorities knew from the outset that our representations could be more or less perfectly sustained, to say the least, and that the foreign office had within its reach information which should have enabled them to take their conclusions at an early stage of the controversy; yet they have fought us off with the greatest pertinacity and with a disregard for the weight of evidence which can only be appreciated after a careful perusal of all the papers.

I think, moreover, that the disposition of the ministers to force the legations to deal with provincial officers is not to be admitted or yielded to. The remarks of Tung-ta-jen amount to this: "Go to Nanking. If you can get a settlement there, well and good. If not, do not hope for anything here." This means that the supreme government desires to be a spectator simply in the conduct of foreign affairs. It is the old, old story at Peking, that the general government is afraid to instruct its provincial officers, or that their system is such that they cannot do so without a certain violation of the theory of the government.

A letter of mine on this subject, in which I discussed the issue at length, was published in our book of Diplomatic Correspondence or of Commercial Relations for 1870 or 1871. It had reference to questions raised by Sir Rutherford Alcock in connection with the celebrated Yang Chow expedition. The fact is that there is no viceroy in the empire whose tenure does not depend upon the good-will of the government at Peking, and as a consequence not one who would greatly disregard the expressed wishes and much less the orders of the government. When this is remembered in connection with the other fact, that the foreign office is composed of the leading men of the government, is the government in fact, within its sphere, the *non possumus* of Tung-ta-jen and his colleagues can be appreciated at its worth.

Moreover, it is not apparent why the work of persuading a viceroy should be devolved upon the foreign minister. This same viceroy at an earlier stage of the Keorjeor negotiation scouted our representations, and it was because I had brought the foreign office to see that certain facts must be admitted, that the viceroy changed his tone on the occasion of Mr. Holcombe's visit. Withdrawal from Peking to pursue matters with the viceroy under these circumstances would relieve the foreign office, and as a consequence the viceroy, from pressure.

Looking to all the facts and considerations stated, I doubt not that

you will approve the course I have taken, and as well the terms of the final letter addressed to Prince Kung. If you see your way to do so, I have now to ask:

1st. For approval of my representations in regard to interest on the Ward claims.

2d. Approval of my representation that the full sum of 54,000 taels, aside from interest, is due to Mr. Hill.

3d. For authority to say to the foreign office that their course in regard to the matters in hand does not meet our just expectations and is not calculated to promote confidence.

I shall, in the mean time, watch the business carefully, and seize any opportunities which may offer to improve the situation. These will not be the less likely to occur because of the attitude which I have assumed.

You will remark that my representations to the government contained in the two memoranda presented by Mr. Holcombe are in such form that I shall not be discredited if they do not meet your approval in all respects.

I shall write to Mr. Hill to state his view of the question of interest on his claim. Meanwhile I refrain from any expression of opinion in this connection. I may, however, call your attention to the remark of Mr. Fish in his instruction No. 96: "As the claim is of long standing, the estimate of interest should partake of the nature of damages, and should be considered equitably;" and mention, also, that the clause was not brought under adjudication or made a matter of representation to the government until a comparatively recent date.

I may say, in review, that I cannot believe that the Chinese will make any great resistance in the matter of the Ward claims. They are not unlikely to hold out in the other matter, but having brought them so far forward, the chances for the future are decidedly improved.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 324.]

Prince Kung to Mr. Seward.

PEKING, *July* 26, 1877.

I have had the honor to receive your note stating that Mr. Holcombe had returned to Che Foo from his trip to Nanking, to which place he had been in order to discuss the so-called Ward and Keorjeor claims with the southern superintendent of trade. You add that you presume I am aware that the negotiations there were a failure, and the reasons therefor, and add that you propose to dispatch Mr. Holcombe to Peking at an early day to speak with the foreign office, &c.

After repeated discussions of this business with your excellency, an understanding was at last arrived at that the southern superintendent of trade should be requested to arrange a plan for its settlement, and hence the Yamen at that time instructed him to adjust it in some satisfactory way. It would seem that if your excellency would hold in careful consideration the motive which influenced this Yamen in suggesting this procedure, there would be no difficulty in reaching a settlement.

To refer to your excellency's statement in the note under reply, that you propose to send Mr. Holcombe to Peking to discuss the business: Because of failure after long discussion at Peking to settle these cases they were referred to the viceroy at Nanking, whose facilities for adjusting them are greater and more rapid than those within the control of this office. It will be inconvenient, therefore, to change from the plan agreed upon, and such a change would only result in additional confusion.

With cards and compliments of prince and ministers.

[Inclosure 2 in No. 324.]

Extract from minute of conversation between Mr. Holcombe and the viceroy, Li Hung Chang, July 26, 1877.

At this point his excellency asked Mr. Holcombe what success he had met with in his recent visit to Nanking.

Mr. Holcombe replied that, as his excellency was doubtless aware, he had been sent to Nanking to endeavor to arrange with Viceroy Shen a settlement of the so-called Ward and Korjeor claims, and that he regretted to say that his mission had only been partially successful; for while the viceroy admitted a certain responsibility, his offers for a settlement were not such as could be accepted.

His excellency said that the viceroy at Nanking had sent him a full report of the negotiations; that he considered his excellency Shen to be an exceedingly upright and just man, and he thought the terms proposed by him were fair, and should be accepted.

Mr. Holcombe said that in the Ward claims the viceroy had conceded liability as against the heirs of Woo to the full amount of the principal, but had declined to allow interest, and in the Keorjeor case he had admitted a liability as against the heirs of Takee, but only to an amount of about one-fifth of the claim.

His excellency said of course the claims were against Woo and Takee and not against the Chinese Government, and that in the Ward claims no interest was allowed, because Benson was indebted to Woo, and the charter-money claimed for the Keorjeor was excessive.

To this Mr. Holcombe replied that it was well known that the supplies purchased were for the use of Chinese troops, and that the steamer was chartered for the use of the Chinese Government in suppressing a rebellion, and that hence the claims could only be regarded as against the government. If that government, after the settlement of the claims in question, chose to take recourse against the heirs of Woo and Takee, that was a matter which concerned the government itself. As regarded Benson, arbitrators had decided that he had not been guilty of misappropriation of funds, and that question could not be reopened.

The viceroy asked why the minister did not pursue the heirs of Woo and Takee, to which the response was made, "Because the claims which the minister was pressing under instructions he was pressing as against the Chinese Government, and he could take no steps against either Chinese officials or subjects."

His excellency asked what was now proposed.

Mr. Holcombe responded that he was on his way to Peking to speak with the members of the foreign office, with a view to secure a modification of the position assumed by the Nanking viceroy, and that, should he not succeed, the reference of the business to Nanking would be considered at an end, and it would come again upon the foreign office.

The viceroy expressed a strong desire that the cases, small of themselves, yet of long standing and affecting the good relations of the two governments, might be closed at an early day.

After some miscellaneous conversation, the interview closed.

CHESTER HOLCOMBE.

PEKING, *July* 30, 1877.

[Inclosure 3 (first part) in No. 324.]

WARD AND KORJEOR CLAIMS.

Memorandum of a conversation held with the foreign office, at Peking, July 30, 1877.

Mr. Holcombe presented himself at the Yamen at 3 o'clock p. m., where he met the ministers, Shen, Mao, Tung Cheng, and Hsia, and two secretaries.

After the usual preliminary remarks Mr. Holcombe made a brief statement of his visit to Nanking, adding that the terms of settlement proposed by the Viceroy Shen were not such as could be accepted, and that in consequence he had been requested by Mr. Seward to return to Peking and lay the two cases again before the foreign office, with a view of securing some modification of the terms as proposed or some action looking to an immediate settlement of these long-standing issues.

Shen remarked that the foreign office had, two days earlier, sent a note to Mr. Seward in the matters under discussion, and asked whether Mr. Holcombe had seen it. Reply was made in the negative, whereupon a copy of the note was produced. It proved to be in response to Mr. Seward's note of July, informing the prince that Mr. Holcombe was about to visit Peking to speak with the ministers about the claims, and said, in

substance, that the cases having been referred to the southern superintendent of foreign trade for settlement, the foreign office disclaimed any right or power to consider the business until informed by that officer of his inability to settle the cases; that his proposition was fair, and should be accepted, &c.

After reading the note Mr. Holcombe said that it could hardly be expected that the minister would accept any such disclaimer as that. In the whole business, although the minister had, in violation of ordinary modes of procedure, consented to the Yamen's request that the business be referred to the Nanking viceroy for settlement, still, in it all, the foreign office was held to be the principal upon the side of the Chinese government and the viceroy subordinate. If satisfactory terms could have been agreed upon at Nanking, the cases would have been closed then and there. As such was not the fact, it had become necessary to call the attention of the foreign office again to these cases, and to ask it to take such steps, either by an instruction to the Nanking viceroy or otherwise, as would secure the desired result.

To this Shen responded that the foreign office could not instruct the viceroy as to the terms of settlement, for should they do so, he would turn on them with the inquiry why, if they desired it to be closed in that particular way, they did not settle it themselves. Mr. Holcombe reiterated that, in the business in hand, the foreign office was the principal and the viceroy a second, and that the second in any matter was always open to receive advice from his principal. This was further evident from the fact that in the event of the failure of the negotiations at Nanking, the whole business would revert to the foreign office for adjustment.

One of the ministers, Tung, said that the Yamen could not settle the cases. They belonged to the outside provinces and must be settled there. The Yamen could not manage them. The viceroy at the very outset of the Nanking negotiations had admitted a certain liability in the two claims, which, were the discussion to continue a hundred years, the foreign office would never admit, because the claims did not come naturally, under the Chinese system of government, upon them, but upon the viceroy, the provinces, where the original obligations had been incurred. This was evidence that the viceroy meant to deal in a spirit of fairness with the business. Further, the viceroy had been influenced, not by a strict sense of justice, but by a regard of the good relations between the two governments. According to Chinese law, in the absence of requisite proof (documentary) none of these claims could be collected. But the viceroy had deviated from the strict letter of the law and admitted liability out of his desire to close long-standing cases, and to remove any vexatious questions from the arena of discussion between the two governments. The offers made at Nanking were liberal and should be accepted.

Mr. Holcombe responded that it was certainly a matter of satisfaction that his excellency the viceroy had so squarely admitted liability in the claims, and he was far from desiring to bring forward anything in the nature of complaint or a grievance against that gentleman, who had treated him with great courtesy, and had listened patiently to all he had to say. At the same time he was bound to remark that there seemed to be a grave inconsistency in the position held by the viceroy. In the Ward claims his excellency had declared in a written memorandum, and often in conversation with the speaker, that, to quote his own language, "the late Taotai Wooshould have paid in full the sum returned by the arbitrators as due and owing." Here was a direct admission that a certain sum of money was justly due from Woo more than thirteen years ago. Up to this time it has not been paid, and there was no consideration either in justice, law, or international usage which would absolve the debtor from paying interest on his outstanding obligation, especially as during all these years fruitless yet earnest efforts had been made to secure payment. It was difficult to conceive under what ruling the viceroy had decided not to allow interest upon a debt declared by him to be just, and payment of which had for more than a decade of years been refused. A secretary remarked that interest had not been allowed because Benson was a defaulter to Woo in a large sum of money, which had never been recovered. Mr. Holcombe replied that that question could not be reopened. Benson's accounts had by Woo's consent been referred to the same arbitrators, whose decision as to amounts due the viceroy had declared to be just, and those gentlemen after careful examination had decided that Mr. Benson had honestly expended all the funds intrusted to him, and was not a defaulter, nor indebted to Woo or to the Chinese Government, and hence no further notice could be taken of the charge brought against him. The viceroy had decided that the total amount of the award should have been paid at the time the award was made. That being admitted, it follows naturally and necessarily that the creditors are entitled to a fair use for their money during the time it has been withheld from them. The Nanking viceroy had admitted 10 per cent. to be a fair rate, and that rate was now claimed. Mr. Holcombe went on to say that great care had been taken in presenting the claims at Nanking. For example, in the Ward claims, as discussed with the foreign office by Mr. Seward, the gross amount included certain items held by English subjects and certain others held by Chinese. As the discussion at Peking had never reached the details of the claims, this fact had never been mentioned. But before dispatching Mr

Holcombe to Nanking Mr. Seward had stricken out these items from the sums total, which now only covered such items as were actually owned by American citizens. Thus on the one hand care had been exercised to present only such claims as were legitimate, and on the other hand it had been frankly admitted that the claims were just and should have been paid in February, 1864, more than thirteen years ago, and hence it would seem that the claim for interest could not be rightly objected to, and Mr. Holcombe, speaking in the name of the minister, must again request the ministers of the foreign office to transmit such instructions to Nanking as would secure the payment of interest as well as principal. The minister was quite willing to concede that the foreign office might meet with some peculiar difficulties in settling the business itself. Indeed, this consideration has influenced him largely to consent to the reference to Nanking. But he, acting under the instructions of his government, had no option, and should the reference to Nanking result in failure, as it would unless the foreign office could see its way to secure a modification of the viceroy's terms, the minister would be obliged to bring the cases again to the ministers themselves, and to ask an immediate settlement at their hands.

Shen said the reference to Nanking was not a failure, as a proposition for settlement had been made. To this answer was made that, granting that an offer had been made, such offer could amount to nothing unless its terms were such as could be accepted. The bare offer amounted to nothing; and as the viceroy and the foreign office had both been distinctly informed that the terms proposed were entirely inadmissible, it followed that unless those terms were modified the reference to Nanking would be a failure.

Shen replied, "No; don't consider the reference a failure; only say that the proposed terms of settlement are a failure." To which Mr. Holcombe replied that as the viceroy had declared repeatedly his inability to concede any other terms, it followed that the entire reference must fall to the ground unless the foreign office were prepared to take measures to secure a modification of those terms.

Tung then remarked that the cases were unimportant, and that in spite of the absence of necessary evidence the viceroy had acknowledged liability, and offered to pay certain sums because he desired to strengthen the friendly relations between the two governments, and the thing to be done was for Mr. Seward to accept the terms and close the cases. The viceroy was an exceedingly able and upright officer. He had made a liberal proposition, and it now only rested with Mr. Seward to close up the business. If he did not it would not be the fault of either the foreign office or of the viceroy, but of Mr. Seward.

To which reply was made that, without questioning in any way either the ability or the fairness of the Nanking viceroy, his terms of settlement could not be accepted. A failure to settle the business at the moment was less to be feared than a settlement effected on terms which neither law nor equity could defend. The Government of the United States was not less anxious to close up the long-pending business than the Government of China, yet it could only settle on a basis consistent with right and justice.

The minister, Cheng, after a long speech complimentary to the United States minister and the government of the United States as well, and after dwelling at length upon the desirability of closing the two cases under discussion, said that the foreign office must put itself into the hands of Mr. Holcombe, and request him, on his return to Che Foo, to lay the whole case before the minister, state plainly to him the anxiety and the difficulties of the situation of the foreign office, and urge the minister to accept the terms offered at Nanking. He enlarged upon the unparalleled virtue and justice of the Nanking viceroy, and said he was assured that if Mr. Holcombe would only do the foreign office this favor, and lay the whole situation before the minister, advising him to accept the tender made, he would listen to his secretary's advice, and the business would be closed.

Mr. Holcombe, after thanking the minister for his kind words, on behalf of Mr. Seward, remarked that he feared he could hardly undertake such a commission, if for no other reason than that the terms proposed did not seem just to him, nor such as the minister ought to accept.

Mao said that the viceroy had kept in mind the sincere and cordial relations existing between the two countries in suggesting the terms, and they could safely be accepted.

Mr. Holcombe replied that he could only reiterate what he had already said. The basis was not one to which the minister could agree, and unless the foreign office could instruct or advise the viceroy to modify them it would become necessary for him to say, speaking in the name and under the instructions of the minister, that the reference to Nanking must be considered as ended, and the minister would expect a settlement at an early day from the foreign office itself.

To this several ministers answered at once, "No; the reference to Nanking cannot be a failure. The viceroy must settle the cases. Ask Mr. Seward to send you there again."

Mr. Holcombe stated that he had two memoranda upon the cases which he was

directed to lay before the ministers. He had not brought them, as the Chinese text was not complete. He asked when he should call again and place them in the hands of the ministers.

Being requested to give them two days for consultation, he took his leave, agreeing to call at the Yamen August 1, at 3 p. m.

CHESTER HOLCOMBE.

PEKING, *July* 31, 1877.

[Inclosure 3 (second part) in No. 324.]

Précis of interview with the foreign office at Peking, August 1, 1877.

Upon presenting himself at the foreign office Mr. Holcombe met the same members as were present at the interview had July 30. He presented the two memoranda which Mr. Seward had prepared upon the Ward and Keorjeor cases, dated July 23, and stated that it was the wish of the minister that these two papers be considered a part of the formal papers in the business.

Much of the conversation which followed was a mere repetition of what occurred on the 30th, and hence need not be repeated.

The ministers expressed at great length their opinion that the settlement offered by the viceroy at Nanking was just, considering the status of the cases from their point of view, and might well be accepted, and after Mr. Holcombe had repeatedly stated that the basis which was proposed by the viceroy of Nanking could not be accepted; then Mr. Holcombe said that he must ask again that the foreign office would instruct the Nanking viceroy to so modify his propositions as to meet the view of the minister as indicated in the two memoranda which he had brought with him, and expressed a hope that the result of the two days' deliberation had been to lead them to acquiesce in his request.

Shen responded that they were all of the same opinion as at the earlier interview. They could not instruct the viceroy as to the details of settlement. They would instruct him to effect an immediate adjustment of the two cases, and this was as far as they could go.

Tung added that the proposition of the viceroy was based not upon the merits of the claims but upon the desire to put at rest these matters which had for so long a time been a source of discussion and correspondence between the two governments. According to Chinese law, in the absence of documentary evidence, nothing could be claimed, but out of friendly feeling and moved by a desire to promote good relations between the two powers he had made his offer.

Mr. Holcombe said it seemed quite unnecessary to go again into the question of evidence. It had been discussed many times and at great length. Further, the admission of liability made at Nanking might be held as setting entirely at rest the whole question of evidence. But it should be kept in mind that the claim advanced in the so-called Ward case was under an arbitration, and was for an unpaid balance of the award. This award was made both in Chinese and English, the Chinese copy being handed to Woo by the arbitrators, and the English to Mr. Seward. Mr. Holcombe held in his hand the English text of the award in the shape of the original document, bearing the signatures of the two arbitrators. Certainly the strictest construction of Chinese law could demand no more positive evidence than this, and he begged to lay it before the ministers.

Tung said it was in English and they could not read it.

Mr. Holcombe said that the Yamen had been furnished months ago with a translation of it by Mr. Seward, and they probably had also seen the Chinese copy furnished to Woo.

Tung said there was no use in discussing the evidence, as the Nanking viceroy had admitted the claim. In which opinion Mr. Holcombe said he fully concurred.

Tung then asked who were the arbitrators. To which Mr. Holcombe answered that one was an American and one an Englishman. Tung then said, "There, you see! Not a Chinese among them. If there had been a Chinese, you would never have secured such an award."

Mr. Holcombe remarked that he could not see what occasion there was for raising such an issue. Woo named one arbitrator, an Englishman. He could have named a Chinese had he preferred to do so. There was no question as to the amount of the award, as it had been admitted by the viceroy that it was all justly due. The question at issue was that of interest on the award for the time, amounting to more than thirteen years, during which the claimants had been kept out of sums of money to which they were justly entitled.

Cheng said the Chinese Government never allowed interest upon disputed claims. No matter how long they were outstanding, when settled only principal was paid, no

interest was allowed. The other ministers echoed his words, and added that the same procedure was followed, so they had heard, in Western nations.

Mr. Holcombe replied that these could hardly be considered as coming within the category of ordinary claims. Some of them were of two or three years standing at the date of the award, and it was distinctly stated by the arbitrators that they should be paid without interest in February, 1864. No interest was claimed for any of the items for the time during which they had been outstanding prior to the last day of February, 1864. But it was held that interest legitimately accrued during the time subsequent to the date mentioned when by the award of the arbitrators they should have been paid in full. It was believed that this position could be maintained both in law and in equity. If Woo had not broken a solemn agreement upon which he had entered formally, and in his official capacity, not only would there be no claim for interest presented to-day, but years of tedious and unpleasant discussion would have been avoided.

Shen remarked that Woo had acted wrongly, and much trouble had arisen in consequence. But now a proposition had been made for a settlement, which would end the trouble. They had hoped Mr. Seward would have seen his way to accept the viceroy's basis. It seemed to be fair to both sides and calculated to put an immediate end to an unpleasant business.

Mr. Holcombe replied that the acceptance of the viceroy's terms was out of the question. The minister's instructions not only forced him to say this, but he feared that unless the foreign office could give him some better guarantee than had yet been indicated by them he should be forced to say to them that the reference of the two cases to Nanking must be considered as at an end, and the minister would look to the foreign office itself for an early liquidation of the claims.

Here several of the ministers spoke in turn, urging that further trial be made at Nanking, and requesting that Mr. Holcombe be sent there again by the minister. Shen said the foreign office would send a careful report of the conversations held upon the two cases at their two interviews with Mr. Holcombe, with copies of Mr. Seward's memoranda to the viceroy, with an instruction to him to settle the cases up at once upon terms which Mr. Holcombe could approve.

Mr. Holcombe then asked the question: "But suppose the Nanking viceroy adheres to his former terms, and refuses when I present myself before him a second time to modify his first propositions—what then?" To this answer was made: "O, he won't do that. But, in case he should, it was hoped that Mr. Seward will consider the whole subject and conclude the business on the terms as proposed."

Mr. Holcombe then said that he should be doing wrong if he held out any hope to the members of the foreign office that Mr. Seward would allow a second journey to Nanking to be made on such vague and indefinite assurances as those held out. Something was due to the dignity of the Government of the United States, and while Mr. Seward had yielded to the request of the foreign office and allowed the first reference to Nanking, and while it was not claimed that the first mission there had been an utter failure, yet it had not secured the result hoped for, and the minister would allow no further reference there except upon definite and positive guarantees. The memoranda just handed in represented the sums demanded by Mr. Seward; they were ultimate and final, and no modification of them need be expected. In case the viceroy at Nanking was not instructed to settle upon those terms, further relegation of the business to him was worse than useless, as it would only serve further to embarrass the foreign office when the claims come back upon them, as come they would, for settlement.

Tung remarked that the foreign office could discuss the claims for a hundred years, if it was desired, but they should never settle them, as they belonged at Nanking and must be settled there. He then reiterated the proposition made by Shen, and urged that Mr. Holcombe go again to Nanking and make a further attempt there. In this the other members joined with much urgency.

Mr. Holcombe replied that he desired the ministers to understand fully that it was idle to look for a settlement of the cases at issue upon the terms proposed at Nanking, and that he could not hold out to them any hope that his superior would send him to Nanking a second time on such vague assurances as they had given. He was very sorry they could not see their way clear to any more positive action. He could only return to Chefoo, report their conversations to the minister, and leave him to take his decision, which he felt sure would not be in the direction of a second mission to Nanking.

The ministers urged again a second visit to Nanking, and then the interview closed.

CHESTER HOLCOMBE.

NOTE.—Two days later the foreign office informed Mr. Holcombe that they had already sent the papers mentioned above to the viceroy at Nanking, with an instruction to him "to settle the cases at once upon terms satisfactory to Mr. Holcombe."

[Inclosure 4 in No. 324.]

Mr. Seward to Prince Kung.

CHEFOO, *August* 9, 1877.

I have received the dispatch which your imperial highness addressed to me on the 26th of July, in regard to the Ward and Keorjeor claims, and I have learned from Mr. Holcombe the result of his conversations with the ministers of the Yamên touching the same matters.

My readiness to consult the convenience of the Yamên was shown in the promptness with which I consented, in May last, to send Mr. Holcombe to Nanking upon the assurance of the ministers that a settlement of the cases in question would thus be reached. As that reference failed, I cannot see any way to consent to deal further with the viceroy as you now request.

Your imperial highness will not fail to admit that the reference of foreign ministers to provincial officers for the discussion and settlement of international affairs is not sanctioned by diplomatic usage, and you will understand that I have some reason to complain of the result of the trial of this procedure already made, since it has become evident that the ministers of the Yamên spoke unadvisedly when they assured me that it would effect a settlement. In point of fact, I know of no good attained by the reference to Nanking excepting the demonstrations secured over the official seal of the viceroy that your imperial highness and the ministers associated with you have for many months assumed untenable positions in regard to matters of no great concern advanced by the representatives of a friendly power.

As therefore your imperial highness and the ministers insist upon a further reference, and have declared in your dispatch and in the conversations with Mr. Holcombe that my refusal will result only in additional confusion, it becomes my duty to report all the facts to my government, where they cannot fail to make an unfavorable impression.

I have, &c.,

G. F. SEWARD.

No. 30.

Mr. F. W. Seward to Mr. G. F. Seward.

No. 192.] DEPARTMENT OF STATE,
Washington, October 13, 1877.

SIR: Your dispatch No. 324, of the 11th August last, with inclosures in relation to the "Ward" and "Keorjeor" claims has been received.

In reply to your request for instructions I have to refer you to my No. 180, of the 27th of August, upon the subject, the substance of which you seem to have anticipated.

I am, &c.,

F. W. SEWARD,
Acting Secretary.

No. 31.

Mr. Seward to Mr. Evarts.

No. 340.] UNITED STATES LEGATION,
Peking, October 9, 1877. (Rec'd Dec. 13.)

SIR: I have the honor to hand to you herewith a letter which I have received from this government in regard to the Keor Jeor claims cases, and my response.

This correspondence, to which I invite your special attention, will serve to justify my refusal to be a party to a further reference to Nanking, and will show how carelessly the foreign office does its work. It will prepare the way also for the further treatment of the matters in hand, when the mo-

ment shall appear opportune. This is likely to be soon, I think, but I shall not commit myself to a definite statement of the sums demanded, until I receive your response to my dispatch of August 11th, numbered 324.

The question in regard to interest on the Keor Jeor claim will form the subject of an early communication to you.

I have the honor, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 340.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication in reply:

August 14, 1877, I had the honor to receive your dispatch in the so-called Ward and Keorjeor claims, in which you state that you cannot assent to a further reference to the southern superintendent for settlement, since it is not consistent with the usage established by international law for foreign ministers to be relegated to provincial authorities in their negotiations, that the expression of a desire on the part of this office the business be settled by the Nanking viceroy is not reasonable, since it would seem that the reference already had to that officer has been of no other use than to show that the objections heretofore made by this office to the claims have had no good foundation; that since the ministers of this Yamen still insist upon a further reference to Nanking, as stated in their conversations with Mr. Holcombe, and in their letter stating that a modification of the mode would be inconvenient and produce confusion, your excellency feels bound to report all the facts to your government, &c.

In response I have the honor to state that this office has always maintained that if the Ward and Keorjeor claims were to be discussed on their merits, they could not possibly be paid. But, moved by a regard for friendly relations, and being unwilling that a trifling matter of dollars and cents should provoke endless discussion, the ministers of this Yamen stated to Mr. Holcombe, upon the 28th of May last, that for the settlement of these cases they could only write an unofficial letter to the southern superintendent of trade directing him to devise some mode. This course was suggested, not because our position in regard to these cases was untenable, but from considerations of friendship.

We learned from Mr. Holcombe, upon his return that same day to the Yamen, that your excellency accepted our suggestion, and requested that the viceroy be instructed to close the business at once.

Subsequent to our instructions to that officer we received, upon the 26th of July, a note from your excellency stating that Mr. Holcombe's mission to Nanking in order to negotiations in the Ward and Keorjeor claims had not been successful, and that you proposed dispatching him to this capital to speak with this Yamen, &c., &c.

Having in mind the fact that our efforts at the capital had not been successful, and that consequently a reference of the business to Nanking had been settled upon, and that hence the business ought to be settled there, we made reply to your note in that sense. Upon the 30th July and 1st August Mr. Holcombe presented himself at this office, and communicated verbally and in detail your excellency's views. He stated that in the Keorjeor case the question of interest might be left for further discussion, but that interest would be insisted upon in the Ward claims. He requests that the southern superintendent be instructed to modify his position, as necessary to a settlement. If this were not done the whole business must revert again to your excellency and this Yamen for adjustment. He was at the moment informed that if the business reverted again to this Yamen it would be contested as before, and no settlement could be reached; that it must be settled at Nanking. He was also shown the note which we had addressed your excellency.

Mr. Holcombe repeated that if we would consent to instruct the viceroy to modify his position, then alone would your excellency consent to a further reference to Nanking, but that if this office would give no such instructions, he certainly could not go there again. Reply was made that there was no trouble in writing to the viceroy, but that we could not instruct him to modify his propositions. We could do no more than send him a *precis* of our conversation which had been carefully noted, His Excellency Shen's consideration, and instruct him to effect an immediate settlement. After Mr. Holcombe's departure we sent a transcript, as stated, to the southern superintendent for his information. Thus, in the settlement of these cases by the Nanking viceroy, this office has in all points acted in accordance with your excellency's views and those expressed by Mr. Holcombe. We have certainly desired, in a spirit of sincere friendship, to arrive at a solution.

In the dispatch under reply, your excellency states that a relegation of a foreign minister to the provincial authorities for the transaction of business is not consistent with the usages of international law, and you cannot assent to such reference. In May last, when speaking of this business with Mr. Holcombe, at the time the letter to the southern superintendent was suggested, we supposed that the intendant at Shanghai must first discuss the business with the consul at that port. In that event it would have been necessary for your excellency to instruct the consul to that effect. But Mr. Holcombe stated that your excellency thought to send him to Nanking to discuss the business with the viceroy, &c., &c. As these cases originated at Shanghai, in their discussion it would ordinarily be proper for the superintendent of trade, after the receipt of the letter from us, to instruct the intendant at that port to consider them with the consul.

But as your excellency proposed to send Mr. Holcombe to Nanking, the viceroy did not wait the receipt of the papers in the cases before acting upon them. This is a reliable proof of His Excellency Shen's desire to effect an early settlement.

This office is desirous of some mode of effecting an adjustment of these claims. If your excellency declines to assent to the mode proposed, it is because your excellency is not entirely sincere in your desire for an adjustment. I trust your excellency will give a careful consideration to the whole business.

As to your excellency's referring the business again to your government, that rests entirely with yourself. .

But, if you decide to make such reference, I trust you will include in your report our correspondence with you and His Excellency Shen's negotiations with Mr. Holcombe, for the information of your government.

PEKING, *August* 17, 1877.

To His Excellency GEORGE F. SEWARD,
&c., &c., &c.

[Inclosure 2 in No. 340.]

Mr. Seward to Prince Kung.

PEKING, *October* 9, 1877.

SIR: Owing to the absence of the secretary of legation, I have not been able sooner to acknowledge the receipt of your dispatch of the 17th August, in regard to the Ward and Keorjeor claims.

In acknowledging the receipt of this dispatch it seems appropriate to submit to you in a candid spirit the following comments upon its contents.

In the last paragraph but one of the communication with which your imperial highness has favored me, you remark that if I do not assent to a further reference of the business to Nanking it is because I am not entirely sincere in desiring an adjustment. The history of this negotiation affords, as I believe, no ground for this declaration.

The Ward claims have been urged by this legation for more than twelve years. They were taken up by me as unfinished business at an early moment after my arrival, and I have spared no expenditure of effort to make it clear to your imperial highness and the ministers associated with you, that they are justly due and payable by your government. I have presented them to your imperial highness and the ministers associated with you in repeated conversations and written communications. I have sent the secretary of legation, at the suggestion of the ministers, to Nanking, to speak about them to your viceroy in that city and have again dispatched him from the seacoast to your capital to report the failure of the viceroy to accord the settlement which I was led to expect. I have made it clear that my whole course has been taken in pursuance of the instructions of my government. In saying then that I am not sincere in desiring a settlement, your imperial higness raises an assumption which I am sure you will withdraw upon a full consideration of the facts.

The Keorjeor case stands upon exactly the same footing as the Ward claims, excepting that it was first brought forward by myself. I have dealt with it with equal painstaking carefulness. It was embraced in the reference to Nanking, and was again brought forward after the unexpected failure of that reference. At all times and in all ways both matters have been presented without the omission of a single point or the neglect of a single opportunity.

I have no desire to indulge in complaint of the course which has been pursued on the other side. It is to be said, however, that the whole history of the business affords more or less evidence that the representations advanced by us have not been met with a ready willingness to reach the facts and to act as they should indicate. The reference of the Ward claims to arbitration and the use, nay, the existence, of the steamer Keorjeor was denied. The officials at Shanghai, the viceroy at Nanking, the foreign

office itself, have opposed denial after denial, which have all in turn been shown to be unnecessary and untenable. And, indeed, one of the most noteworthy difficulties advanced is exhibited in the present attitude of your imperial highness. You are well aware that the viceroy at Nanking, although heretofore in opposition, has recently admitted the merits of the Ward claims and the use of the steamer Keorjeor, as alleged by us, and has declared that all we have asked, saving interest only, should be paid on the former, and certain sums stated on the latter. Yet when I come to declare to your imperial highness that interest is expected on the Ward claims and a more liberal settlement of the Keorjeor case, I am answered, to quote the words of your imperial highness, that "if the Ward and Keorjeor claims were to be discussed on their merits they could not possibly be paid."

If indeed this be the opinion of your imperial highness, it would be much better for you to say so in unmistakable language and to decline further correspondence. The Government of the United States desires friendliness and good feeling; it does not desire complaisance when your sense of justice will not justify complaisance. It has yet to learn that good-will can be established when there is not confidence and esteem based upon the knowledge that right-dealing is the one rule of conduct.

But I am satisfied that the singular proposition which has been enunciated in your dispatch is not adhered to by your imperial highness. It is not logical to suppose that you could have seriously meant that it should be understood as it reads when it so seriously impugns our representations; when it so completely discredits the admissions of your viceroy; and when, in the same dispatch, you ask me to transmit to my government the very statements of the viceroy which condemn your words. I am led to believe, therefore, that your imperial highness has unwittingly consented to the use of the language referred to, and this is the more to be believed when it is remembered that you have many grave matters requiring your attention, and that the preparation of your dispatches is necessarily left to the supervision of others.

Your imperial highness will pardon me if I dwell on this point a moment longer, in order to call your attention to a similar remark made in another part of your dispatch. When, at his interview of July 30 and August 1, the secretary of legation informed the ministers of the Yamen that it would be inconvenient for me to send him again to Nanking, he was told that if the business should revert again to the foreign office it might be discussed for a hundred years and no settlement could be reached. your imperial highness repeats this statement in the following words: "If the business shall revert to this Yamen it will be contested as before, and no settlement can be reached."

Taken as it stands this language is a repetition of the other statement that our representations have no solid basis of right and justice. But I am willing to believe again that your imperial highness has not intended to say this, but to indicate simply that your system of government is such that you prefer, or are obliged, to defer largely to the opinions and conclusions of your viceroys. It cannot be supposed, however, that His Majesty's government abdicates formally all control over its viceregal agents, and that a part of China is greater than its corporate whole. It cannot be supposed that your imperial highness is destitute of influence, or that the great councils of the empire and the regency are the vassals, and not the ultimate controllers of the viceroys. How is it, then, that this business cannot be settled at the capital?

I am not altogether unacquainted with the system of government which obtains in the vast empire of which your imperial highness is a distinguished official and to which I am accredited. I am prepared to recognize the proper scope of the functions of your viceroys, and I am now and have always been ready to accommodate my course to the necessities of your administration. But what do we come to when we are asked to receive answers to our representations from a viceroy and told that no other procedure is admissible; when the foreign office resolves itself into a medium of communication only, nay, into a medium of communication from the foreign minister to the viceroy, declining even the function of reporting the response of the provincial authority?

If I say to this that I decline to consent to such a procedure, and declare that the relations of this government and its viceroys toward one another are matters of your concern and not of ours, asking to be treated as the envoy of a great people to a great people, of a government to a government, and not to a provincial subordinate, am I wrong? Does your imperial highness, who has so long and so ably occupied a high place in China, who is known the world over as the chief secretary of state for foreign affairs, wish me to take up any other view?

In concluding these remarks, I ought to say further, having reference to the final clause of your imperial highness's letter, that I have no personality in these or any other affairs with which I am called to deal in my representative capacity. I am simply the mouth-piece of my government, and my whole correspondence with your imperial highness, without abatement or amplification, is reported to the Secretary of State at Washington.

I seize this opportunity, &c.,

GEORGE F. SEWARD.

No. 32.

Mr. Evarts to Mr. Seward.

No. 203.] DEPARTMENT OF STATE,
Washington, November 26, 1877.

SIR: Referring to recent correspondence between the department and your legation in relation to what are known as the Ward claims, I desire to invite your attention to the particular case known as the Ward estate claim.

Mr. John Fogg Twombly, who is now here but expects to return to China shortly, has called the attention of the Department to this claim as well by letter as in person, and while that gentleman expresses great satisfaction at the progress of the Ward claim proper, under your recent management, he urges with much anxiety the necessity of having the Ward estate claim pushed, if possible, to a settlement simultaneously with the other; alleging what appears to be a plausible reason for such action, namely, that should it be omitted from any settlement now made, it will prove very difficult to secure for it any future consideration from the Chinese Yamen.

You are no doubt familiar with the facts and circumstances which form the basis of this claim, and will be, with the information thus possessed by you, better able to judge of the propriety or otherwise of now pressing it in conjunction with the matters already the subject of negotiation.

In a dispatch from your predecessor, Mr. Low, of May 4, 1872 (No. 151), in relation to these claims, he says in regard to the Ward estate claim, "It has never been taken up by me officially; it seems to rest on a less firm foundation than the other; and as the government refuses to recognize the validity of the better one, I deemed it inexpedient to attempt to press the other."

As an inclosure to the dispatch just referred to is a copy of a letter of the 20th of March, 1872, addressed by Mr. Twombly to Mr. Low, having special reference to this particular claim. I transmit herewith a * copy of that inclosure for your convenience, lest the original may not have been preserved in the legation. It is desired that you will give the matter consideration, and that if, after an examination, you find no circumstances that, in your judgment, would render it inexpedient to press it now, you will take such measures as may seem best adapted to secure its adjustment and payment simultaneously with the other claims which, after so many years of delay at last happily give promise of an early adjustment.

You will report the result of your proceedings to the department.

I am, &c.,

WM. M. EVARTS.

No. 33.

Mr. Evarts to Mr. Seward.

No. 206.] DEPARTMENT OF STATE,
Washington, January 10, 1878.

SIR: Your dispatch No. 340, of the 9th of October, 1877, in relation to the Ward and Keorjeor or Hill claims, has been received, and the correspondence between your legation and the foreign office, of which

* For inclosure see inclosure No. 1 in paper No. 2.

you inclose a copy and to which you invite the Department's special attention, has been considered.

Your declination of the proposition of the imperial minister for foreign affairs to again remit the matter to the Viceroy of Nanking for settlement appears to the department to be entirely proper and to be justified no less from the failure of your previous earnest efforts in that quarter through Mr. Holcombe than upon the grounds upon which you base your refusal, namely, that it is discordant to establish international usage to remit the diplomatic representative of a foreign government to subordinate officials for the transaction of business which, as is shown in regard to these claims, is properly the subject of settlement between the two governments. The justice of these claims having, as it is understood from your previous dispatches, been acknowledged by the offer of the Viceroy or southern superintendent of trade to pay the principal without interest, but which offer you very properly declined to accept, this government must feel now constrained to look alone to the Imperial Government of China for a final adjustment of the claims. Your proceedings in this regard are therefore approved.

For the general views of the Department in reference to your No. 324 I must again refer you, as I did in my instruction of the 13th of October last (No. 192), to instruction No. 180, of the 27th of August, in which you were furnished with a copy of the opinion of the law officer of the Department on the subject.

I am, sir, your obedient servant,

WM. M. EVARTS.

No. 34.

Mr. Seward to Mr. Evarts.

No. 352.] UNITED STATES LEGATION,
Peking, December 6, 1877.

SIR: Having received your instructions numbered 180 and 192, approving my refusal to send Mr. Holcombe to Nanking a second time to speak with the viceroy of that district in regard to the Ward and Koerjeor claims, and approving generally my views and procedure in regard to the matters indicated, I have again brought the business to the notice of the foreign office.

You will remember that the ministers in their last dispatch to me declared that these matters could only be settled at Nanking, and that I could not sincerely desire a settlement since I refused to go there again. You will remember, also, that they intimated that at Peking we might continue the discussion for a hundred years, but that nothing would result.

You have in your hands my response to this dispatch, and will have remarked that, while I adhered to my refusal to transfer the negotiation to Nanking a second time, I commented in a serious way on the question raised as to my sincerity in desiring a settlement and the course of procedure laid down,

I may say regarding the procedure proposed that, while very anxious to dispose of the claims, I could not consent to be referred, as a matter of right, to a provincial officer for the transaction of business of an international sort, although such reference might possibly promise to

result satisfactorily. The principle involved was an important one, and I would do nothing to compromise it in the slightest degree, lest it might lead to grave difficulties in the future. I could not see that in the given case there was any reason why the foreign office should not close up the questions at issue, and I felt that to relieve the ministers from pressure would operate as well to relieve the viceroy, and that the result might perhaps be disastrous. To this dispatch I had received no answer. I knew that this indicated very well that the ministers were in a quandary; that they felt that they could not reply sustaining the proposal that I must negotiate at Nanking, while on the other hand that they were unwilling to abandon their favorite position in regard to all troublesome questions.

Speaking in an administrative sense, the ministers of the foreign office can, undoubtedly, control the action ot the viceroy, and secure from him, if it be necessary, such a report as may seem to them desirable. Speaking politically, it is natural that they should wish to avoid responsibility and the keen criticism to which they are supposed to be liable on the part of the immense and only half-employed office-holding element which surrounds them.

The situation has, therefore, been one of much delicacy for me. To relieve the ministers from pressure would be unfortunate. To press them too closely might simply develop an obstinate spirit, result unsatisfactorily in the given matter, and affect unfavorably my general influence. Any false step taken by me would be seen and taken advantage of instantly.

In reaching a conclusion as to the policy I ought to follow under these circumstances, I felt bound, in review of the whole business, to give a first place to the considerations of right and dignity involved.

Having learned from you that my views of the merits of the claims were not mistaken ones, and having presented these views to the Chinese to the utmost limit of clear and full representation, it seemed to me that, subject to your approval, I had discharged my duty, and that I could not prosecute the discussion without detracting from my own self-respect and discrediting my government. For, while I believe that it is the duty of the government to defend its citizens abroad, I do not believe that the object is to be pursued in the attitude of a suppliant for justice. One wishes to stand erect at all times, and certainly so when face to face with Asiatic statesmen, who are apt to consider a conciliatory spirit, even, the evidence of weakness.

I was disposed, therefore, to believe that the moment had arrived to say to the Chinese that we had done with representation, and to ask for a plain "yes" or "no" to our case.

In placing this conclusion before the government, I was unwilling, of course, to be abrupt or harsh in manner. Moreover, it was always possible that some point might be raised on their side which I ought to meet before delivering an ultimatum, or even that they would yield, at last, consent to our case.

Under these circumstances I concluded to send Mr. Holcombe to the ministers, to draw out from them any reason, if such there might be, why I should not proceed as indicated above, and generally to learn the situation. I gave him written instructions, which I inclose herewith, and which he adhered to with careful exactness and tact.

The result of his interview is given in his report, which I also inclose. It indicates that the ministers are sensible of the fact that they have placed themselves in a false position, and that they cannot safely refuse to meet our demands.

As navigation is about closing, I send to you this statement of the case as it stands. I do not, however, care to forecast the next phase of the business. To-day a Chinese statesman is all smiles and complaisance. To-morrow a cloud has come over his disposition, and the prospects have completely changed. It is manifest, however, that great progress has been made, and that the chances of my being able to close up this long-standing and essentially difficult negotiation are measurably improved.

My plan now is simply to wait a few days to see if the Chinese will move. If they do not, after full consideration of the situation as developed in this dispatch, and in the light of the information procured by Mr. Holcombe, I shall take the next step. If beyond it none other shall be necessary, I think that gratification will be felt by you, as certainly there will be by me.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 352.]

Mr. Seward to Mr. Holcombe.

PEKING, *December* 4, 1877.

SIR: You have read the department's instructions, Nos. 180 and 192, in regard to the Ward and Keorjeor claims. They are in response to my letters reporting the results of your visit to Nanking, and, later on, to Peking, and cover the letter which I addressed to Prince Kung on the 9th of August, declining to send you again to Nanking. These instructions, taken in connection with earlier ones, entirely approve the attitude which I have assumed regarding the matters in hand.

You know also that after my return from Chefoo, on the 9th of October, I addressed a letter to Prince Kung, pointing out more clearly the reasons why we may consider the attitude taken up by the ministers of the foreign office as unsatisfactory, and that for whatever reason this letter remains unanswered.

It is impossible from anything now known to us to divine whether the ministers are disposed to adhere to their refusal to deal further with the business here. If they are, we have come to a dead-lock, for I cannot consent until otherwise instructed to be referred again to Nanking.

On the other hand, it will not be well, as I think, to enter anew upon the general discussion of the matter at issue. Procrastination would probably be the sole object of the ministers. Yet to refuse point-blank all discussion might afford them opportunity to charge upon us the failure of the negotiation.

Under these circumstances, I have concluded that the wisest course which I can take is to ask you to go to the ministers and to state to them that my position and action have received the full support of the government; that their support has been accorded in view of the fullest possible statement of our later as well as of our earlier negotiations, and that it may be assumed, in consequence, that we are not likely to recede in any way from our demands; that in fact we cannot clearly see why, having admitted the principal sums due upon the Ward claims, they should raise a question as to interest, those claims having been steadily kept before them from the outset; or why, in view of the memorandum on the Keorjeor claim presented in July, and the admissions of the viceroy at Nanking, they should dispute regarding the principal sum due to Mr. Hill.

Having made yourself understood so far, when the moment is opportune you may add that there is no feature of the cases which we are not prepared to sustain in argument, but that we are not disposed to continue the negotiation in a controversial spirit. We have fully and fairly presented our case and we must not be blamed now if we request at an early moment a plain "yes" or "no" to our demands.

I need hardly say that the matter presented by you to the ministers, rather than your manner, should be relied upon to indicate the strength of our case.

I am, &c.,

GEORGE F. SEWARD.

[Inclosure 2 in No. 352.]

WARD AND KEORJEOR CLAIMS.

Memorandum of conversation between the ministers of the foreign office and Mr. Holcombe, Wednesday, December 5, 1877.

Present, Ministers Shen, Tung, Chêng, and Hsia, and two secretaries.

After the usual preliminary conversation, in which Mr. Holcombe took occasion to convey to the foreign office Mr. Seward's congratulations upon the completion of a treaty between China and Spain in regard to Chinese laborers in Cuba, the ministers present were informed that Mr. Seward had some months ago forwarded to the Secretary of State at Washington a full report of the negotiations between Mr. Holcombe and his excellency, the viceroy at Nanking, which report included all notes which had passed between the two parties, minutes of all conversations, and also translations of the dispatch covering two memoranda which the viceroy had addressed to Mr. Holcombe; that in August last Mr. Seward had forwarded to Washington an equally full report of Mr. Holcombe's conversations with the foreign office had July 30 and August 1, including two memoranda handed at one of those interviews to the ministers, Prince Kung's note of July 26, to Mr. Seward, and the latter's dispatch of August 9 to the prince. Mr. Holcombe added that the responses of the Secretary of State to these reports had been received, which responses fully approved and supported the position assumed by Mr. Seward in the business. As the position taken by the government at Washington had been taken with all the correspondence in the business, down to the most minute and informal, before them, their approval of the minister's course might be regarded as final, and in which no modification or change need be expected. In face of the admission of the Nanking viceroy that the full amount claimed as principal in the Ward cases should have been paid years ago, and the known fact that those amounts were fixed by arbitration, it was hard to understand how any question could be raised against the justice of the demand for interest. And in view of the admissions of the same officer in the case of the Keorjeor, and Mr. Seward's memorandum of July last, it was not less difficult to see how any dispute could be maintained against the payment of at least the principal due on the steamer.

His excellency Shen responded, in a somewhat low-spirited manner, that the foreign office did not know what to say or do in the business. In suggesting the reference to Nanking last spring they had been actuated by friendly motives and a sincere desire to settle the cases, and had been sanguine of a favorable issue. They had repeatedly explained to Mr. Seward and Mr. Holcombe the difficulty of reaching any settlement at Peking, partly because there existed no proof of the validity of the claims and partly because they originated in a province remote from Peking. At the end of July they had urged Mr. Holcombe to go again to Nanking, and had been told by him that unless they were prepared to instruct the viceroy there to settle on a definite basis stated, he was obliged to inform them that Mr. Seward would not consent to a second reference thither. The scheme had thus fallen through, because they could not so instruct the viceroy. They could only direct him in general terms to "settle the cases at once." He thought the refusal to go a second time to Nanking was a mistake. If Mr. Holcombe had gone, all would have been closed up satisfactorily.

His excellency Shen then went on to say that they had, a short time since, received a dispatch from Mr. Seward which criticised somewhat closely their attitude in the matters at issue, and which had so puzzled them as to what answer to return, that they had thought they would make no answer at all.

Mr. Holcombe responded that the criticisms referred to, close-fitting as they might have been, were kindly meant; Mr. Seward only desired to settle up matters which had been long at issue between the two governments, and which for the sake of both should be closed at once. Mr. Holcombe asked what the Yamen proposed.

Shen responded that they hoped the government at Washington would think the business all over again and modify its tone. He added pleasantly, "I think you are at fault in this. You should have advised them differently. Mr. Seward will do as you advise, and the government at Washington will act as he thinks best."

Mr. Holcombe replied that the ministers were very much in error if they supposed for an instant that Mr. Seward would accept his advice unless it approved itself to his own better judgment, and not less mistaken in the supposition that the Secretary of State would simply accept Mr. Seward's opinion without a searching examination into the merits of the case. It was worse than idle to build any hopes that the position assumed by the Government of the United States upon all the points involved, aided by the exceedingly full reports sent them, would be modified or receded from. Mr. Holcombe had declined to accept the Nanking viceroy's terms of settlement. His refusal had been approved by Mr. Seward and at Washington. Mr. Seward had refused to accede to a second reference to Nanking without certain instructions which the Yamen had declared itself incompetent to issue, and this refusal had been approved.

Thus the situation stands plain and well defined, and the practical question is, "What shall be done?"

Shen said he did not know what to do, and asked Tung if he could suggest anything.

Tung responded that they were all one family in the foreign office, and if Shen could not suggest anything, he could not. He then went on to say that the Nanking viceroy had mismanaged the negotiations, having taken hold of them in a careless and half-hearted way. It was his fault that they were not successful in the summer.

Mr. Holcombe then said that Mr. Seward was ready and willing to sustain every point held by him in argument, but it would seem that the cases had been exhaustively discussed already, and their present status was clear. The Yamen ought, therefore, not to be surprised if they should receive at an early day a dispatch asking for a definite and plain answer to the question whether the Government of China would or would not pay these claims.

Shen said that they did not see the use of further discussion, but they should much dislike to receive such a dispatch, and should not know how to answer it. They had such an one in the spring, and did not know how to respond. He appealed to Mr. Holcombe to suggest some procedure.

Mr. Holcombe responded that if the Yamen would to-morrow instruct the viceroy at Nanking to pay the Ward claims, principal and interest, and the principal in the Keorjeor case into the consulate-general, or into a bank at Shanghai, subject to the order of the legation, the cases would both be shortly settled. Only the question of interest in Hill's case would remain, and this would be dealt with in a fair and liberal spirit.

Shen replied that they could not instruct the viceroy.

Mr. Holcombe responded that the viceroy was plainly subordinate, in foreign matters, to the foreign office, and hence could be instructed. To which answer was made by Shen, "O! we can instruct him, of course, but we cannot instruct him to pay that money."

Mr. Holcombe then stated that Mr. Seward, having exerted himself to the utmost to close up these matters, and they being so clearly put before the Yamen that the ministers had said that there seemed no need of further argument or explanation, they must not be surprised if Mr. Seward shortly asked for a definite answer concerning the claims.

The ministers reiterated their dislike to receive such a dispatch, and the interview then terminated.

CHESTER HOLCOMBE.

PEKING, *December* 6, 1877.

No. 35.

Mr. Evarts to Mr. Seward.

No. 210.] DEPARTMENT OF STATE,
Washington, February 19, 1878.

SIR: Referring to your dispatch of the 6th of December last (No. 352) in relation to the "Ward" and "Keorjeor" claims, while it is to be regretted that your continued efforts to bring about a final settlement of these long pending claims have not thus far been productive of the results hoped for, the department conceives that your course in declining to have the claims again remitted to the local authorities at Nangking for adjustment was the correct one, and under the circumstances, and especially in view of the fact that the Nangking authorities had already after full investigation in connection with Mr. Holcombe reached a conclusion in regard to these claims, it seemed the only course that you could properly adopt with a due regard for the dignity of the legation and the rights of the claimants. You will continue these efforts in accordance with the instructions which you have heretofore received from the department, and it still is to be hoped that from the representations already made to the foreign office, the imperial government will be able to see the propriety and necessity of an early settlement of these claims, the equity and justice of, which is understood by the department to have been acknowledged by that government.

With reference to the claim of Mr. Charles E. Hill, on account of the steamer "Keorjeor," it is perceived that the imperial government, while assenting to the justice of the claim itself, evinces an indisposition to entertain the question in regard to the demand for interest.

Upon what grounds this refusal to pay interest is based it is not easy to perceive. The steamer was regularly chartered in September, 1862, by Yang Takee, who has been shown to have acted in that transaction as the agent of the Chinese Government. The charter-party or agreement between Hill, the owner of the vessel, and Takee specified the price at which the vessel was chartered, and further fixed a liquidated sum as her value in case of loss or destruction in the service in which she was engaged. The steamer is shown to have been in the service of the Government and to have been destroyed while in that service. No reimbursement for the value of the steamer or for her earnings under the charter-party has ever been made to Mr. Hill, her owner, or to any one on his account. The loss of the charter-party has been accounted for and its contents established by satisfactory proofs; and the steamer rendered essential and valuable services to the Chinese Government in the suppression of a formidable rebellion which, for a moment at least, threatened the existence of the empire. The claim accrued in 1863, and the records of the department show by dispatches from the Consulate-General and the legation that the claim has been unremittingly pressed by the claimant ever since that time: first against the legal representatives of Yang Takee, then against the local authorities at Shanghai, and finally, after this department had upon examination of all the facts and circumstances reached the conclusion that the claim was one the adjustment of which properly rested with the Imperial Government, it has been pressed in that quarter. It is these long delays and continued efforts without results, amounting in the estimation of the department to a failure of justice, that has in the end imparted to the claim originally resting in contract a diplomatic character, and as the claim if adjusted on its original basis of contract would, on the plainest principles of commercial law, command interest from the date on which it accrued to that of its payment, it is not easy to see why anything less than that can be considered a fair measure of damages where the demand is by the laches of the parties upon whom the obligation rests converted into one of tort.

The justice of the demand of interest, moreover, is recognized by the Viceroy at Nanking as against Yang Takee, as exhibited in the inclosure to your No. 290, of the 7th of July last (Mr. Holcombe's report to you), in which that official, while understanding the amounts of the principal sums, renders the matter as he is willing to have it accepted, thus:

	Taels.
Charter money	6,500
Price of steamer and interest	20,400
Total taels	26,900

It may be added that Mr. Hill's claim possesses this exceptional merit, that there appears in it no item or demand based upon prospective profits that the vessel might have earned, nor any demand on account of personal trouble or inconvenience. It is presented on a purely mercantile and business basis, and the essential facts as to its validity and justice have been established by incontestable evidence. In view of these facts and circumstances, it is conceived that the claim for interest rests on the same ground as that of the principal itself. These suggestions, however, are submitted for your guidance in the future con-

duct of the negotiations in regard to the claim, and are not intended to modify or interfere with the discretion which the department in its former instructions has committed to you in regard to these claims.

You will again express to the minister for foreign affairs the earnest desire felt by the department that not alone in the furtherance of the rights of the claimants, but in the interest of the friendly relations subsisting between this government and that of His Imperial Majesty, the claims may be adjusted without further delay.

I am, &c.,

WM. M. EVARTS.

No. 36.

Mr. Seward to Mr. Evarts.

No. 358.] UNITED STATES LEGATION,
Peking, December 12, 1877. (Received February 25, 1878.)

SIR: I informed you on the 6th instant that I had said to the minister of the foreign office that I had received your approval of my refusal to accept the settlement of the Ward and Keorjeor claims proposed by the viceroy at Nanking, and to send Mr. Holcombe there a second time; that you had also approved my representation that we must insist upon interest in the case of the Ward claims, and the sum of 54,000 taels as principal in the other matter, and that we must expect to be finally informed at an early moment of the conclusions of this government. In the same dispatch I informed you of the response of the ministers, which, while it was not such as to promise a satisfactory result, was essentially respectful to our representations. They in particular declared that they had nothing to advance against the case put before them in the memoranda presented at the end of July. Their object, as always, appeared to be to refer me to the viceroy at Nanking.

You are aware that I have not been disposed to assent to such course in our negotiations. If it be necessary or desirable for the foreign office to refer any questions presented to them by foreign representatives to their viceroy, we cannot deny them the opportunity to do so. But there is no reason known to me why we may not ask this government to respond directly to whatever may be advanced by us. The viceroy acts in these matters, not in a judicial way, but administratively. If it be necessary for the government to defer to their views, which is doubtless measurably the case, the foreign office can, at least, take these views and return us an answer accordingly. But clearly they cannot require us to make our legations peripatetic, impose on us the necessity of fighting all our diplomatic battles first here at the capital, and then, when we cannot be withstood here, turn us over to the vice-regal establishments.

The negotiation with the foreign office in the given cases has come to just this pass. The ministers do not see a way to contest the issue with us. They probably wish to have the cases settled, and would settle them as we desire, if they could do it without assenting to the more regular procedure which we insist upon. Ought we to yield the point or to stand fast for the very important principle involved? It has seemed to me clear that we cannot yield the point of principle. To do so would perhaps lead to a defeat in the given matters, although I think it would not. It would, at any rate, commit us to the procedure

now insisted upon in all future cases, and to all the roundabout, uncertain, and troublesome negotiations which that implies.

You will not think strange that under these circumstances I have been disposed to bring the business to a direct issue, and that I have in effect said to the foreign office, "If you have any further considerations to advance, we are ready to hear them; if not, please say finally what you will do."

Properly anxious not to appear over-positive, to exhibit due respect to the ministers, and to give them all possible opportunities to find a way to meet our wishes, I sent my final dispatch to them by the hands of Mr. Holcombe. I inclose it herewith, and also the instruction which I gave to him for his guidance in putting our objects and views unmistakably before them. In the earlier interview, I had charged him to speak in such manner as to draw out any comment which they might desire to make upon the claims themselves. In this one, he was to present the general considerations affecting our relations, which are more or less directly or remotely involved.

You will see from Mr. Holcombe's memorandum, that the ministers were complimentary to myself, recognizing what I trust is true, that I have "shown a spirit of justice and good feeling in this business, and in all my relations with them; that they were anxious to dispose of the matter, and still hoped that I would reconsider my refusal to go to Nanking."

You will see also that Mr. Holcombe stated his readiness to withhold my dispatch in case they would give assurances that they "would be prepared within a few days to make any proposition looking to a settlement."

I shall not attempt to forecast the result. I submit, however, that I have discharged my whole duty in regard to these claims. They came to me as a legacy of difficulty from all my predecessors who have been established here. By a slow process of patient and painstaking representation and argument, I have pushed matters to a point where the ministers admit that they have nothing more to advance, and yet the business is open. I can go no further without a sacrifice of principle, of my own dignity, and of the dignity of our government. I prefer, therefore, to withdraw from any further discussion. While not attempting to forecast the future, I may say that I have not taken a step which has not forwarded the prospects of a favorable issue, including in this statement the last step taken by me. This government is sensitive to criticism, and to expressions which may savor of dissatisfaction. The attitude which we have now taken up will not affect our general relations, at least not mine with the ministers, but it will be constantly in their minds. It involves no threat, scarcely even an imputation that they are dealing hardly with us. But they will none the less feel that we are not satisfied, and they will be anxious to push matters into better condition before many months roll round. Their minister will go to Washington in the spring. They will, in particular, desire to have him go there free from embarrassment.

I have never for a moment lost sight of the fact that the subject of my negotiations are claims arising under contract, and that, as such, the business is one of a sort not usually urged by diplomatic agents with any especial zeal or energy. In the same way, I do not expect that the department will be disposed to authorize the use of positive language in order to promote a settlement. You will find yourself situated, if I mistake not, exactly as I am, not satisfied, yet not able or disposed to do more than show by your attitude that such is the fact.

I hope therefore to receive your approval of my course, and authority to express this approval to the government here, with a declaration that, while we withdraw from the negotiations, we none the less expect that their sense of justice will lead them, sooner or later, to meet the views which we have fully and very patiently presented to them.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 358.]

Mr. Seward to Prince Kung.

PEKING, *December* 10, 1877.

SIR: I have the honor to recur to the matter of the Ward and Keorjeor claims, and to inform you that I have received from my government responses to my dispatches down to and including the 11th of August, and embracing Mr. Holcombe's report of his negotiations with the viceroy at Nanking and with the ministers of the foreign office on the 30th of July and August 1, and including the memoranda presented by him on the latter occasion, your imperial highness's note of July 26, and my dispatch from Che Foo of August 9.

The representations made to your imperial highness by me, as thus indicated, have received the full approval of my government. It therefore becomes my duty to again request in the letters of the memoranda mentioned the payment of the full sums claimed in the Ward claims, that is to say: 10,903.86 taels and $5,694.37, with interest from March 1, 1864, at 10 per cent. per annum to date of payment, and 54,000 taels on account of the steamer Keorjeor, the matter of interest in this case to be left for further discussion; and to ask whether you are prepared to pay these sums or to order them paid at once.

As it is not considered expedient to continue the discussion of these matters, it becomes my duty to ask for an early and definite answer to this letter.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 2 in No. 358.]

Mr. Seward to Mr. Holcombe.

PEKING, *December* 10, 1877.

SIR: You have in your hands a letter of this date, addressed to Prince Kung, asking final answer to our representations in the matter of the Ward and Keorjeor claims. This letter I desire you to take to the foreign office, as I intimated would be done in my note of the 8th instant.

In presenting this note to the ministers, please say that I regret personally that I have not been able to secure the settlement of the matter in hand. It is the part of a minister to accommodate difficulties, not to aggravate them, but not to do this by the sacrifice of what is clearly due his people. You may say to them in this connection that I am not aware of any case which has arisen during my tenure of office in China, either at Shanghai or at the capital, in which I have not dealt justly with complaints advanced on their side, or in which I have brought forward unreasonable or extreme proposals.

It gives me pain to find under such circumstances that we have come to a dead-lock in the given matter.

You may say further, that our government will be equally disappointed. It is actuated by the earnest desire to do justice and to foster and promote good relations. It has its own difficulties, and this government must remember that such of these as arise in our relations with this empire will not be made less by their failure to meet a plain grievance presented to them by us. Their refusal to settle this business will necessarily result in a call for all the papers by Congress, and the comment which will be made upon the Chinese side of the correspondence in Congress and before the country cannot fail, as I think, to discredit the friends of China, and to strengthen the hands of those who may be unfavorably disposed.

They are about to send a minister to America. Is it not desirable for him to go in the pleasantest way and with no grievances outstanding here?

In submitting these remarks you may enforce them, as you are able, by your personal knowledge of the policy of our government and my own disposition in the conduct of public affairs; but you will be careful to say that, while the moment has

seemed to me appropriate to bring forward in a sincerely friendly spirit the considerations indicated, we insist that all our demands are inherently just, and that the general considerations advanced are mentioned to show that we keep in sight all the bearings of all the incidents of our intercourse.

A mail will be dispatched to the United States on the 12th instant, at twelve o'clock. If we do not hear from the foreign office in a satisfactory way before that time, I shall report to Washington that I have exhausted efforts to secure a settlement.

I have, &c.,

GEORGE F. SEWARD.

CHESTER HOLCOMBE, Esq.,
&c., &c., &c.

[Inclosure 3 in No. 358.]

WARD AND KEORJEOR CLAIMS.

Memorandum of a conversation between certain ministers of the foreign office and Mr Holcombe, December 10, 1877.

Present: Shen, Mao, Tung Chêng, Hsia, and one secretary.

Mr. Holcombe stated to the ministers that he had been sent to them by Mr. Seward to present a dispatch asking formally for a positive answer from the Chinese Government upon the subject of the claims. He then repeated in detail the statements which, by his instructions, he was charged to lay before them.

The ministers replied that they gladly recognized and appreciated the spirit of justice and good feeling which Mr. Seward had shown in the conduct of this business, as in all his relations with them. On their part, they had been exceedingly anxious to settle these claims, and were particularly desirous of doing so before their minister started for Washington. A mistake had been made in not going a second time to Nanking, where alone the business could be adjusted. They still hoped that Mr. Seward and Mr. Holcombe would reconsider this point.

To which response was made that no change need be looked for in the attitude of either the government at Washington or the legation on that point. One reference to Nanking had been agreed to as a concession to their wishes. That having failed, no proposition looking to further negotiations with that viceroy would be considered, unless, indeed, they were prepared to instruct him to pay certain specified amounts, which they had repeatedly declared themselves unable to do.

The ministers said they could do nothing further than to urge the Nanking viceroy to settle up the cases at once. They then went on to express regret at the receipt of the dispatch which Mr. Holcombe had placed before them, and said they were sorry to have the business come to this shape, as the prince would be angry with them, and they should not know how to answer the dispatch.

Mr. Holcombe then remarked that if the ministers could give him any assurance that they would be able within two or three days to make any proposition looking to a settlement of the claims which would be likely to be approved by Mr. Seward, he would, upon his own responsibility, withdraw the communication for that length of time. Otherwise he must ask them to consider it at once, and give an early answer.

The ministers said they could not think of any proposition; that it was very easy to answer the dispatch, but not in any way likely to give satisfaction.

Mr. Holcombe said that he hoped for the sake of the good feeling of both governments that their answer would not be in the shape of a repetition of their refusal to deal with the matters at issue here and of their proposition for further reference to Nanking. Such an answer would be very disappointing to his government, and not likely to serve the end held on both sides as eminently desirable, namely, the adjustment of the business. He then took his leave.

CHESTER HOLCOMBE.

PEKING, *December* 11, 1877.

No. 37.

Mr. Seward to Mr. Evarts.

No. 366.] UNITED STATES LEGATION,
Peking, December 24, 1877. (Received February 26, 1878.)

SIR: I had the honor to address you on the 12th instant, transmitting to you a dispatch which I had sent to the foreign office, asking to be

definitely informed whether this government is prepared to settle the Ward and Keorjeor claims as presented by us.

The ministers have shown unusual alacrity in responding to my letter. You will see, however, in reading their dispatch, that they avoid giving me a direct answer. I had asked them plainly whether they would pay or order to be paid certain amounts. They responded by referring to the negotiations between Mr. Holcombe and the Nanking viceroy, and add that "the intendant at Shanghai must be instructed to produce the necessary funds for payment." By inference we may assume that it is funds for the payment of the amounts acknowledged by the viceroy which he is to produce.

It is barely possible, however, that they mean to prepare the way for the satisfaction of the claims in full, and at any rate it is open for me to take this meaning out of their letter.

I have responded, therefore, as if taking it for granted that I understand their letter to be a substantial compliance with our wishes.

If it be the purpose of the minister to bring about a settlement, my response will promote the object. If their purpose be different, they will be forced to state the fact, and in this way give us the declaration of their intentions, for which we have asked.

Looking to the possibility that Mr. Wells may be approached by the intendant, I am addressing to him a letter, a copy of which I inclose.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 366.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state of foreign affairs, herewith makes a communication in reply:

Upon the 10th instant I had the honor to receive a dispatch from your excellency setting forth that, in the matter of the Ward and Keorjeor claims, you had reported all the negotiations from first to last to your government, and that you were in receipt of responses according the full approval of your government to all your excellency's representations; and that it consequently becomes your duty to again request, according to the terms of the memoranda handed to this office by Mr. Holcombe, payment of the claims, and to ask whether this government is prepared to pay the sums mentioned or to order them paid at once.

In reply I have the honor to observe that, in this business of the Ward and Keorjeor claims, this office, moved by an exceptionally profound spirit of friendship, gave an unofficial instruction to Shen, southern superintendent of foreign trade, to devise a satisfactory basis of settlement. His excellency Shen, responding to the desire of this office, immediately upon Mr. Holcombe's arrival at Nanking, discussed with him the amounts to be paid, and said to Mr. Holcombe that in case it was thought desirable to settle the business at once, he would instruct the customs intendant at Shanghai to advance the necessary funds.

Since now your excellency addresses me, inquiring from what source the money for the payment of these claims is to be produced, I have the honor to reply that, in accordance with the negotiations between the viceroy Shen and Mr. Holcombe, the Shanghai intendant must be instructed by Shen to produce the funds necessary for payment.

His Excellency GEORGE F. SEWARD,
&c., &c., &c.

PEKING, *December* 19, 1877.

[Inclosure 2 in No. 366.]

Mr. Seward to Prince Kung.

PEKING, *December* 21, 1877.

I have had the honor to receive the dispatch which your imperial highness addressed to me yesterday in regard to the Ward and Keorjeor claims.

Your imperial highness is fully aware of our expectations in these matters. I cannot doubt, therefore, that, in responding as you do to my dispatch of the 10th instant that "the intendant at circuit at Shanghai must be instructed by his excellency Shen, southern superintendent of trade, to produce the funds necessary for payment," your imperial highness means that the business shall be closed in a way which will be satisfactory to us.

Relying, therefore, upon the terms of your imperial highness's dispatch, and having in view the frequently-expressed desire of your imperial highness and the ministers of the Yamen to deal with our affairs in a spirit of candor and friendship, I shall at once instruct the consul-general at Shanghai to receive from the intendant the amounts in question.

It is to be understood, of course, that in waiving for the present the question of the interest which, if any, should be paid to Mr. Hill, I do so without prejudice to any rights which he may have in this respect.

I seize the opportunity to express to your imperial highness the gratification which will be felt by my government at the satisfactory conclusion of these affairs.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 3 in No. 366.]

Mr. Seward to Mr. Wells.

No. 101.] DECEMBER 21, 1877.

SIR: From the tenor of recent correspondence received by me from the Tsung-li Yamen, it seems possible that the intendant at your port may tender to you certain greater or less sums in payment of the Ward and Keorjeor claims. In such event you may say to him that you are authorized to grant to him a receipt for 10,903.86 taels and $5,694.37, with interest on both these sums since March 1, 1864, to date of payment, at 10 per cent. per annum, as full payment of the Ward claims; and for 54,000 taels in full payment of the principal sum due and owing on account of the Keorjeor claims, whenever he shall produce to you evidence of the deposit of those sums in the Hong-Kong and Shanghai Bank to my credit, as United States minister. You will, however, avoid all argument or conversation with the intendant, or with any one appearing in his behalf, in regard to the claims, and particularly in regard to any lesser sums which may be tendered to you, refusing positively to receipt for any such lesser sums.

In case, however, the intendant fails to pay the amounts expected, and tenders any lesser sums, you will so inform me, not upon his motion or request, but as a matter of information coming from yourself, and without saying to him that you will so inform me, leaving him to communicate his course to his government, so that they may bring the facts to my attention as if entirely of their own motion.

If the full amounts indicated be paid in at the bank, please request the manager to grant deposit-notes for the several sums in taels and dollars respectively, without conversion for a period of four months certain, at the best rate of interest allowed on such deposits, in order to give me time to take the instructions of the government as to disbursement of the money.

I am, &c.,

GEORGE F. SEWARD.

No. 38.

Mr. Seward to Mr. Evarts.

No. 368.] UNITED STATES LEGATION,
Peking, December 28, 1877. (Received February 25, 1878.)

SIR: I had the honor to send to you last week a letter from the foreign office in regard to the Ward and Keorjeor claims, which was ambiguous in its tone, or at least might possibly be construed to mean that the Nanking viceroy would pay them in full. I at the same time reported

that, for reasons stated, I had responded as if a satisfactory conclusion of our negotiations had been reached.

The day before yesterday the prince answered my dispatch, saying, in substance, that the viceroy could be instructed to pay the sums heretofore declared by him to be due to us, but that if I expect "any other basis of settlement, the foreign office will find serious difficulty in instructing his excellency Shen."

You will notice that this letter is somewhat more positive in tone than any of those more lately written by the foreign office, in regard to the matters mentioned, although not so positive as many of their earlier notes. It is by no means, as Chinese dispatches go, a flat refusal to pay the sums which we hold to be due to our people.

Pursuing the line heretofore indicated to you, I have responded to this note, declaring once more that the basis of settlement proposed at Nanking cannot be accepted, and protesting that "the refusal of interest on the Ward claims," under circumstances stated, "is in contravention of established principles," and that "the denial of contract of charter-party, in the Keorjeor case, is in direct opposition to the proofs adduced."

I shall not address myself again to the foreign office, in regard to these matters, until your instructions make it appropriate for me to do so. I have indicated in my dispatch No. 358 what instructions would, in my opinion, be calculated to promote an eventual settlement. I may add that I have no doubt at all that a settlement in entire accordance with our representations will be reached, sooner or later, if we simply preserve an attitude of expectancy and make good use of the opportunities which will occur in the course of our relations. It will not be necessary to use harsh language, nor to abate our demands in the least degree. Time will be the chief factor.

I have had some anxiety lest refusals of the tender made at Nanking might affect the right of the claimants to interest on the amounts thus declared due. The present letter from the foreign office removes this possible difficulty, since it indicates that acceptance of such payments by us would be considered as a final settlement of all demands.

I respectfully request your approval of my whole course in connection with these claims to this date. I am the more anxious to receive it as the distance from Washington has made it necessary for me to prosecute the negotiations as it has seemed wise to me, and without the benefit of detailed advice from yourself.

I have the honor to be, sir, your obedient servant,

GEORGE F. SEWARD.

[Inclosure 1 in No. 368.]

Prince Kung to Mr. Seward.

Prince Kung, chief secretary of state for foreign affairs, herewith makes a communication:

Upon the 20th instant I had the honor to receive from your excellency a letter in the matter of the Ward and Keorjeor claims, saying that you proposed instructing your consul-general at Shanghai to receive from the customs intendant at that port the sums due in these claims, and adding that in "waiving for the present the question of the interest which, if any, should be paid to Mr. Hill, I do so without prejudice to any rights which he may have in this respect," &c.

In comment upon your excellency's letter I beg leave to observe that the Viceroy Shen was instructed to enter upon negotiations with Mr. Holcombe in the Ward and Keorjeor claims, and that he pointed out to Mr. Holcombe the sums which he was

ready to pay, suggesting that, in case an immediate settlement was desired, he could instruct the Shanghai customs intendant to advance the funds for payment, thus offering special facilities for a settlement.

If now the intention of your excellency, as expressed in the letter received, is really, having regard for the friendship of the two governments, to direct your consul-general at Shanghai to receive from the customs intendant the several sums due in these two cases, in accordance with the plan which his excellency Shen suggested to Mr. Holcombe for an early adjustment of these matters, this office must direct his excellency Shen to instruct the customs intendant at Shanghai to pay over to your consul-general the sums specified by his excellency Shen to Mr. Holcombe in final and full settlement of these cases.

But if your excellency in your remark regarding interest in the Keorjeor case implies any other basis of settlement than that specified in his excellency Shen's proposition to Mr. Holcombe as an immediate and complete liquidation of all claims, this office will find serious difficulty in instructing his excellency Shen. A clear understanding upon this point is therefore necessary.

PEKING, *December* 26, 1877.

[Inclosure 2 in No. 368.]

Mr. Seward to Prince Kung.

PEKING, *December* 27, 1877.

SIR: I learn from your imperial highness's letter of yesterday that I misapprehended the dispatch which you did me the honor to address to me on the 19th instant, and that, so far from having reached an agreement in regard to the claims matters, they are to be considered as still pending.

I have therefore pointed out carefully to your imperial highness that the settlement of these matters proposed by the viceroy at Nanking "in a half-hearted way," as remarked by the ministers of the Yamen, cannot be accepted.

First. Because interest is denied in the Ward claims, although these were pronounced good by the arbitrators, and fell due under their award, March 1, 1864; and that award has been declared just by the viceroy, by your imperial highness, and the ministers of the Yamen.

Second. Because the viceroy, in dealing with the Keorjeor case, sets aside the formal contract, or charter-party, and tendered for the use of the steamer five hundred taels per month instead of three thousand taels as agreed; and for the loss of the vessel, eight thousand taels instead of twelve thousand taels as agreed.

In accepting now your imperial highness's declaration that payment of the claims can only be made on the basis proposed by the viceroy, I must be allowed to protest, formally, that the refusal of interest, as mentioned above, is in contravention of all established principles, and that the denial of the contract of the charter-party is in direct opposition to the proofs adduced.

There can be no settlement on such a basis.

I can only believe that your imperial highness, immersed in affairs of state, has not given to these matters, so inconsiderable in themselves, yet so pertinent in suggestion, the attentions which our representation have deserved.

I am, &c.,

GEORGE F. SEWARD.

No. 39.

Mr. Seward to Mr. Evarts.

No. 373.] UNITED STATES LEGATION,

Peking, December 29, 1877.—(Received February 25, 1878.)

SIR: You are aware that I have lately asked this government to declare whether they will pay the amount sought to be recovered by our countryman, Mr. Hill, for the use and loss of a steamer, named the Keorjeor, which he chartered to the authorities in Kiungsu, in 1862. You are also aware that, in putting forward this claim, I have mentioned only the principal sum, which, according to our views, is due and owing, and that I have left the question of the interest to which Mr. Hill may be entitled open for discussion.

I am dealing with the matter since it came before me here, and, under the instructions which I have from time to time received, I have had no hesitation in putting forward the demand for 54,000 taels as the principal sum due and owing. The Chinese Government, by their viceroy at Nanking, have admitted the use and loss of the steamer, and have offered to make certain payments on these accounts. The claim of Mr. Hill are so far defended by the admissions of the government that the issues long contested by them are now reduced to questions as to the rate of charter which was agreed to be paid, and the amount which was determined upon as indemnity in case of loss. These questions were fully considered in a memorandum prepared by me for the foreign office, under date of July 23 last, and forwarded to you with my dispatch No. 307, and do not need to be revived here.

While, however, I have had no hesitation in taking a conclusion in this respect, I feel that, under all the circumstances, the claim for interest can only be advanced with much caution. In demanding interest the claimant must be considered as putting forward a claim for equitable relief which is based upon the fact that he has been long kept out of his money. In seeking equitable relief he must expect that the equities which tell against him will not be lost sight of, and these, as it seems to me, are by no means such as can be put aside as of little weight.

I proceed to state what the equities are, on both sides, as they occur to me, without further preamble.

A circumstance which may be held to tell more or less against the claimant, is the fact that the charter of his ship, under which he claims, was one of extraordinary value.

The evidence shows that he was to receive 3,000 taels a month for four months, and, in case of the loss of his vessel, 12,000 taels as indemnity.

Mr. Hill asserts that the latter sum did not represent the cost of his steamer, and it appears from the evidence taken before the court at Shanghai that she must have been worth, judging from the use which could have been made of her, a very much larger sum. Yet, granting the greater value, 3,000 taels a month would afford an exceptional return on any amount which would fairly be declared to be her value.

The charter, made for four months, ran on, moreover, for ten months' additional time, until, when the vessel was lost, the account stood:

	Taels.
For charter, 14 months	42,000
For indemnity for loss	12,000
Total	54,000

It may be assumed from these figures that the claimant was making an exceptionally good business out of the charter of his ship, and it is not surprising that the viceroy at Nanking brought the fact under notice when discussing the case with Mr. Holcombe. But if we should add to the very considerable sum stated above, interest upon it for a term of fourteen years, the result would be an amount strangely disproportionate to the magnitude of the original investment, as judged by the evidence.

I am well aware that a contract is not to be set aside or disregarded because one party may have expected to receive an extraordinary gain from it. The sequel, indeed, has shown that there were peculiar risks attending the contract in question, looking to which, if they had been foreseen, it is doubtful whether the claimant would have granted the vessel to the Chinese on any terms whatever. It is still desirable, as I

believe, to hold all facts in view, where, as in this case, the claimant is demanding the assistance of his government to recover whatever may be due to him.

The equities which arise out of the terms of the original contract, and the circumstances of the unexpectedly long use of the ship, are, however, of less importance than those springing from the fact that the claimant's case was not brought before the government here until very lately.

The use of the vessel began in the early summer of 1862, and ended with her capture on or about the 1st of August, 1863. The claim for the payment from the government was not advanced until July, 1876; more than thirteen years had passed, therefore, before a formal demand was made upon the high authorities of the empire.

I presume that the rule in such cases is very clear, to the effect that interest cannot be demanded of a government prior to the date when the claim upon which it is founded is brought forward, and I should not be disposed to trouble you with any further declarations as to facts, or statement of considerations involved, if the case were free from certain features which may take it out of the rule.

The charter of the Keorjeor was made to a provincial officer named Takee, and the vessel was used for government purposes. So far as we may know, no payments were made to Takee on the part of the government, and certainly none such have been made to Mr. Hill. We presume, therefore, that the claim is good, as against the government.

It appears, moreover, that to the officer who chartered the vessel the claimant constantly appealed for payment. You will find evidence of the fact in the claimant's petition in the cause Hill *versus* Takee, at pages 1 to 6 of printed minutes, as heretofore sent you, and also in the evidence which he gave at the trial, pages 9 to 17. Further evidence is given of the fact in the statement of Dr. Yates, who acted for some time as Mr. Hill's business agent at Shanghai, inclosed herewith, and as well in the fact and circumstances of the prosecution of the action against the estate of Takee, detailed in the minutes mentioned, in the book "Memoranda of Four Conversations," showing my arguments with the intendant in favor of the claims, which is also in your hands,and in my correspondence since the business came before me here.

The official position of Takee is admitted by the Chinese, more particularly in a statement made by the Viceroy Li Hung Chang, forwarded to you with my dispatch No. 204, and also in effect by the statements and admissions of the viceroy at Nanking, as shown in Mr. Holcombe's report, transmitted with my dispatch No. 290.

It is to be said, again, that the claimant's case was more or less perfectly brought before another official. I refer to Woo, who was Taotai (intendant of circuit) at Shanghai, who, as such, was commandant of the Ward corps in connection with which the steamer was used, who was declared by the Viceroy Li Hung Chang, in the statement referred to above, as jointly concerned in the control of the vessels used at Shanghai for military purposes, and who on two different occasions acted as the representative of the Chinese Government in settling claims presented by us on behalf of our people, arising out of the military operations conducted by him, and in pursuance of which the Keorjeor was used. You will find evidence in support of these statements in the petitions of Mr. Hill, at page 3 of the minutes of the trial at Shanghai; in the answer to the said petition, at page 8; in Mr. Hill's evidence, at pages 13 and 16; in Mr. Jenkins's evidence, at pages 17–19; in my own evidence, at pages 30–33; in that of Mr. Cunningham, at pages 34–37; in the papers

submitted by the defense, at pages 42–46; in the evidence of Foo E. Chew, at pages 48–50; of Lee Wei San, at pages 51–54; in the statements of Feng, Taotai, at pages 14, 16, 17, 18, 19, 22, 23, 24, 25, 28, 30, 31, 32, 33, 34, 36 of the book of "Conversations"; and in his judgment, at pages 38–43 of the same document.

It is true that the claim, as put before Woo, was part only of the whole claim, but it is also true that that officer, in rejecting a part, based his action upon reasons which would have held toward the whole, if valid, in respect of the part put forward, and that his rejection of the part was tantamount to the rejection of the whole, so far as the purpose of the present inquiry is concerned.

While it may be held, then, that notice of this claim, as a claim against the government, was given to officers of government in the early years of its pendency, the fact cannot, perhaps, be considered sufficient to warrant us in seeking now to hold the government to pay the interest on it from the beginning. Mr. Hill failed in his recourse to Takee. He failed also in his recourse to Woo, Taotai. What then was his duty, if he wished to protect himself perfectly? Clearly, he should have carried an appeal against Woo and Takee to the central authorities. He did not do this, but continued effort to recover from Takee, dealing with him to this end, apparently in his individual rather than in his official capacity.

Meanwhile the general claims, which had come before me, having a similar origin, had been pressed on the spot, successfully in many instances, unsuccessfully in others, and the latter had been placed before the legation for its action. It is these for which, after the lapse of fourteen years, the government now admits its responsibility, and upon which, with perfect regularity, I am insisting that they should pay interest.

It is to be said, however, in this connection, that there is no reason to believe that, had Mr. Hill's case been pressed here, it would have fared better than the general claims. We are still struggling to secure the interest due upon them, as we are to secure, as a first step, the recognition of the sum claimed as a principal in Mr. Hill's case. It is not, as one may submit under these circumstances, a government which quite deserves forbearance and consideration.

The brief statement thus made will be examined by the department in view of all facts and considerations involved, and is, perhaps, as full as may be desirable under the circumstances. I shall, at any rate, know that I cannot do Mr. Hill injustice, for he has told me that he will personally present his case to you.

It remains for you, therefore, to communicate to me your instructions. I shall carry them out to the best of my ability, but I may say that in my opinion I shall do well if I secure from the government the 54,000 taels. If, in your opinion, interest should or may be claimed, I suggest that, in addition to giving me your instruction to this effect, you should leave me so far free in presenting the case that I may take a course which will not embarrass us in case of failure.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 373.]

Statement of Mr. Yates.

A statement of my connection with the case C. E. Hill *vs.* Yang Takee and the Chinese Government.

In the winter of 1865, when Mr. Hill sailed for the United States, I undertook to collect from the heirs of Yang Takee his claims, 42,000 taels, for charter, and 12,000 taels for the loss of the steamer Keorjeor.

Soon after Mr. Hill sailed, and Yang Takee's widow's term of mourning had expired, I applied to her for payment. She asked if that money had to be paid now. I replied certainly, as it never had been paid. To which she responded then, "Woo Taotai must pay half of it. So you must wait until I can see him." I agreed to do so. Soon after that Woo Taotai came to Shanghai and remained about ten days. Soon after his departure I called again to see Takee's widow about the claims. To my application on this occasion she replied with a defiant manner, "Produce the charter-party and I will pay the bill with interest." Subsequently I made frequent but unsuccessful attempts to see her in regard to the claims. I then called on Le Wei San, the head manager of all Takee's business matters. He admitted that there were bills unpaid, but said he could pay nothing without instructions to do so. From time to time I made attempts through Chinese officials to have the claim paid.

In the winter of 1873 I went from France to New York to consult with Mr. George F. Seward, then consul-general of China, in regard to the propriety of my asking the Washington Government to pay the claim out of the Canton indemnity fund. To my certain knowledge Mr. Hill personally, or in his absence by his agent, never ceased to press the settlement of this claim from the time the steamer was lost to the date of the trial at Shanghai, in 1875.

MATTHEW T. YATES.

SHANGHAI, *September* 10, 1877.

Sworn to before me at Shanghai September 13, 1877.

O. B. BRADFORD,
Deputy Consul-General.

UNITED STATES CONSULATE-GENERAL,
Shanghai, September 13, 1877.

[Inclosure 2 in No. 373.]

Mr. Hill to Mr. Seward.

TIEN-TSIN, *September* 22, 1877.

SIR: You are so familiar with all the particulars of my claim against the Chinese Government for the use and loss of the steamer Keorjeor, that I should not have presumed to trouble you further in the matter had not the Chinese officials entirely changed their ground.

When my claim was first presented by your excellency it was resisted altogether. Now it is admitted that I am entitled to some compensation for the use and loss of the steamer, and even to interest on her value, but the amount of my claim for such use and loss is disputed, on the ground that it is excessive, and interest on the sum claimed for the use of the vessel is refused on the ground, first, that the charter-party under which she was employed is not produced; and, second, that the claim as against the Chinese Government is a new one.

To the suggestion that my claim is excessive, I reply, 1st, that it rests upon contract; and, 2d, that in China as elsewhere the value of a thing depends upon circumstances. At the time when the Keorjeor was chartered she was the only vessel in China that could do what she did, and she was of great use, I might say indispensable to the Chinese service.

The evidence on this point is so full that to discuss it would be a waste of your valuable time; besides, it appears from the evidence of Cunningham, Miller, and Westall, men connected with three of the largest houses in China at the time the vessel was chartered, that the Keorjeor would have been worth for purely mercantile purposes more than the amount stipulated in the charter-party, and it is now positively known that Takee in his accounts with the government charged 5,000 taels per month, instead of 3,000 taels, for her use, and 30,000 taels, instead of 12,000 taels, as indemnity for her loss.

As to the non-production of the charter-party the evidence before your excellency

clearly shows that it was with other papers abstracted from the United States consulate at Shanghai, and the viceroy at Nanking, in his correspondence with Mr. Holcombe, secretary of legation, admits that he knows it was stolen, and gives the date of the proposed sale of the steamer for 8,500 taels, which he could only know from the bill of sale that was attached to and deposited with the charter-party and had not the charter-party been stolen the whole sum claimed, with interest at the then current rate among Chinese, would have been paid by the widow of Takee to Dr. Yates in 1866, and this suit been saved. This I think should dispose of that objection, but I may add that, if anything can be proved by human testimony, the former existence and the terms of that document have been fully proved, and nothing that I can say will add anything to the weight of the testimony already before you. Besides, if the non-production of the charter-party is a defense to the claim for interest, it ought to be a complete answer to my whole claim, a portion of which is admitted.

To the suggestion that the claim is as against the Chinese government a new one, I can only say that as the charter-party was executed by Takee I have always looked to him and his representatives for payment, and the Chinese Government still say that whatever sum is paid must be paid by the representatives of Takee.

It was the United States Government that decided "that as Takee was only the agent of the Chinese Government that government, and not Takee, was responsible." And now the Chinese Government, by the viceroy at Nanking, admitting even a part of my claim, have recognized Takee as their agent in this matter, and as I have never ceased to press my claim against Takee and his representatives, either in person or through my agent, the Rev. Dr. Yates, late United States vice-consul-general and interpreter at Shanghai (his affidavit to that effect inclosed herewith), the Chinese Government cannot now treat my claim as a new one or charge me with neglect. But I consider my claim for interest a just and equitable one, and will consider it on equitable grounds. If, when the claim was first formally presented to the Chinese Government, it had been admitted (saving, of course, all questions as to amounts, &c.), there might have been some slight ground for saying that interest ought to be paid for a part of the time only; or, as the Chinese Government have offered the Spanish Government in the case of the Surana, an amount of interest equal to the principal only should be paid; but instead of admitting my claim wholly or in part, an attempt was made to prove that the Keorjeor was never in the Chinese service, and I have been put to great trouble and expense by being obliged to prove what was well known to the Chinese officials, and what is now admitted by them. Under these circumstances, and the fact that the charter was stolen by them or their agents, the refusal of interest is an attempt of the Chinese to take advantage of their own wrong. I therefore submit that my claim for interest is good on purely equitable grounds, and I fail to see on what grounds a distinction can be made between my claim for interest on the value of the steamer, which is admitted, and that for interest on the amount due for her use, both claims arising under the same contract, the charter-party.

I therefore most respectfully beg to submit that I am justly and equitably entitled to interest on the full amount claimed for charter and indemnity from the date of the loss of the steamer until I am fully paid. The rate of interest I am quite willing to leave, as I left it in my original application, to be settled by your excellency, but I submit that the rate of 10 per cent. per annum, the rate proposed by the Chinese Government as interest on the indemnity for her loss, and the rate given your excellency by the Oriental Bank Corporation at Shanghai, and much below the rate prevailing at the time of the transaction in question, should be the minimum, especially as the rate paid by the Chinese Government on the loan for 5,000,000 taels for five years, just negotiated, is officially announced through the Peking Gazette as being 15 per cent. per annum.

In closing, permit me to say that my course prior to the time the case was placed officially in your hands when consul-general may appear to your excellency exceedingly ill-advised and illogical; and if so to you, who know my character and the whole circumstances so well, how much more so to the government at Washington. Throughout the whole time, however, I have acted with the best intentions. Takee and I were warm friends. He never desired or ever refused to pay the full claim, only asked for a little delay; neither did his widow until after Woo Taotai came to Shanghai at her request, and the charter-party was taken. Even then I honestly believed that Dr. Yates, with his great knowledge of and influence with the Chinese, could collect the claim without giving my own government officials trouble, and saving Takee's heirs from being unmercifully squeezed, as they now will be by the Chinese officials.

Taking these things into consideration, and the fact that 1,000 taels for investment in Shanghai was worth then more than 5,000 now, and that Takee did invest the money due me in property that has paid for itself five times over, and is now worth five times the sum paid for it, while I have been patiently waiting for my just due, I do not think that a delay (even if my fault) which has resulted so favorably to him and so disastrously to me should operate against my claim for interest for the full time.

I am well aware that you excellency has, both as consul-general and United States minister, devoted much time and attention to this matter, and it is with great reluctance that I trouble you again on the subject, but I trust that its great importance to me will be considered a sufficient excuse.

With many thanks for your kind and earnest action throughout the whole case,

I remains, your excellency, obedient servant,

CHARLES E. HILL.

Hon. GEORGE F. SEWARD,
United States Minister in China.

No. 40.

Mr. Evarts to Mr. Seward.

221.] DEPARTMENT OF STATE,
Washington, March 20, 1878.

SIR: I inclose herewith a copy of a memorial * of Mr. Charles F. Jones, a citizen of the United States, presenting a claim of that gentleman against the Chinese Government on account of services rendered by him as commander of the steamer Keorjeor while that vessel was in the service of the Imperial Government of China during the years 1862 and 1863.

As this claim appears to rest on grounds similar to those made on account of the vessel itself, with the circumstances of which your are fully acquainted, it is deemed unnecessary to enter into any detailed statement of the letter beyond what the memorial itself presents.

You will take a favorable opportunity to bring it to the attention of the Imperial Government, and, should objection be urged to its adjustment, place it on the files of your legation, that it may share in the results of any future measures that may be adopted in regard to the Ward and Keorjeor claims.

I am, &c.,

WM. M. EVARTS.

No. 41.

Mr. Mitchell to Mr. Evarts.

UNITED STATES SENATE CHAMBER,
Washington, February 14, 1878.

SIR: Herewith inclosed please find a copy of a communication addressed by Charles F. Jones to Hon. George F. Seward, United States minister at Peking, China, which explains itself. The copy was handed to me by a friend of Mr. Jones with the request that I should call the attention of your department to the original, which I understand has been transmitted to your department by Mr. Seward. I beg to suggest that Mr. Charles E. Hill referred to in this communication is now in this city, and is familiar, as I understand, with the history of the case referred to. I beg to suggest whether his testimony might not be taken by the department while he is in the city.

I would be glad to have an acknowledgment of the receipt of the communication.

Very respectfully,

JOHN H. MITCHELL.

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*For memorial see inclosure in paper No. 41, *post*.

[Inclosure.]

Mr. Jones to Mr. Seward.

Hon. GEORGE F. SEWARD,
United States Minister at Peking, China:

The petition of Charles F. Jones, an American citizen, respectfully showeth:

1st. That in the years 1862, 1863, and 1864, I resided at Shanghai, in the Empire of China.

2d. That in May, 1862, I took command of a new steamer, owned by Charles E. Hill, also an American citizen, which he immediately after chartered, through General Ward, to Yung Takee for the use of the so-called Lung-Kong force. The steamer was called by Takee the Keor-Jeor, and a charter was made at 3,000 taels per month, Takee to have full control of the steamer, appoint all officers and men, and pay all expenses.

3d. That under this arrangement and on the recommendation of General Ward, Takee reappointed me captain of the steamer, with a salary of 300 taels per month, and at their request I engaged a chief officer (a foreigner), an engineer, and fireman, and a crew.

4th. That the steamer was at once made into a gun-boat and guns and a fighting crew put on board.

5th. That I remained in command of the steamer, under General Ward, until his death; under Burgevine and Holland until their dismissal; and continued in command until the summer of 1863, when, in consequence of a slight disagreement with the Wu-Zum, or petty mandarin on board, I was discharged and a native captain placed in charge. Shortly after the steamer was captured and taken to the rebels.

6th. Shortly after my dismissal from the command of the Keor-Jeor, I rejoined the force at the urgent request of Colonel Gordon and served under him as captain of the steamer Tsattle and in other capacities until 1864.

7th. That while Ward and Burgevine had command of the force, the Keor-Jeor was in constant use as a gun-boat and dispatch vessel, being repeatedly under fire, thus exposing all on board to great danger, many men at different times being killed on her. I, for this reason, did not draw my monthly wages from June 1 till December 31, 1862, but left it with Takee for safety. All other expenses of the steamer, however, were regularly paid by the paymaster of the force.

8th. By Burgevine's order I recompanied him to Takee's house, where he went for money to pay the soldiers of the force, and was unfortunately present at the altercation between them that led to Burgevine's dismissal from the force.

9th. In January, 1863, wishing to remit money to my family and exchange being greatly in my favor, I applied to Takee for the money due me, and he refused payment for no other reason than that I was with Burgevine when the trouble between them took place. And the whole amount of my wages for seven months is still due and unpaid, although my wages from that date until my dismissal from the command of the steamer was regularly paid with her other expenses.

The only reason given to your excellency when United States consul at Shanghai for not paying me the money due was an accusation that during a portion of the time between my dismissal from the command of the Keor-Jeor and my re-engagement in the force at General Gordon's request I had acted with the rebels.

10th. That if such accusation had been found true, and was at the time a barrier to my claim for wages honestly earned, I beg to represent that my engagement by General Gordon, and long and faithful service in the force under him afterward, *is* a complete answer, and the Chinese have no right to plead this after again accepting my services.

11th. That I have only lately heard that Chas. E. Hill is pressing his claim for use and loss of the steamer Keor-Jeor against the Chinese government, and as the establishment of his claim must clearly establish the justice of mine, I most respectfully request that you will demand of the Chinese government, or of Yang Takee or whoever is held liable to Hill, the payment of my claim, say seven months' wages, at 300 taels per month, 2,100 taels, with such sum for interest as your excellency may deem just and equitable, and per petition, as in duty bound.

CHAS. F. JONES.

No. 42.

Mr. Evarts to Mr. Mitchell.

DEPARTMENT OF STATE,
Washington, March 13, 1878.

SIR: Referring to your letter of the 14th February ultimo, inclosing a memorial of Mr. Charles F. Jones, in relation to a claim of his against the Chinese Government, I have now the honor to state that a copy of Mr. Jones's statement has been forwarded to the minister of the United States in China, with instructions to make the necessary inquiries in regard to the status and validity of the claim, and, if these shall be found satisfactory, to adopt such measures as may tend to facilitate its adjustment.

I will thank you to convey this information to Mr. Jones.

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

Hon. JOHN H. MITCHELL,
United States Senate.

No. 43.

Mr. Seward to Mr. Evarts.

No. 387.] UNITED STATES LEGATION,
Peking, January 23, 1878. (Received April 1.)

SIR: I have the honor to hand to you herewith Mr. Denny's dispatch, No. 6, and the inclosed petition of Mr. C. F. Jones, asking me to prosecute a claim which he raises against the Chinese Government for services rendered in the year 1862.

I inclose also my response, declining to ask your authority to take up the matter, for the reason that the petitioner was subsequently engaged in waging war upon China.

I have, &c.,

GEORGE F. SEWARD.

[Inclosure 1 in No. 387.]

Mr. Denny to Mr. Seward.

UNITED STATES CONSULATE,
Tien-Tsin, January 18, 1878.

SIR: I have the honor to transmit herewith the claim* of Charles F. Jones, of Portland, Oreg., for taels 2,100, against the Chinese Government, for his services while in command of the steamer Keorjeor, during the Taiping rebellion. I received this document by the last mail from the United States, with a letter from Mr. Jones, asking me to forward it to you.

I am, &c.,

O. N. DENNY, *Consul.*

Hon. GEORGE F. SEWARD,
United States Minister at Peking.

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* For inclosure see inclosure to paper No. 41, *ante.*

[Inclosure 2 in No. 387.]

Mr. Seward to Mr. Denny.

No. 38.] PEKING, *January* 21, 1878.

SIR: I have received your dispatch No. 6, inclosing the petition of Mr. C. F. Jones, asking me "to demand of the Chinese Government or of Yang Takee, or whoever may be held liable," payment of a claim for his services as commander of the steamer Keorjeor for a part of the time whiles he was employed for military purposes b the Chinese authorities at Shanghai, in the years 1862 and 1863.

After Mr. Jones's employment as indicated, he joined the Tai Ping insurgents who were then waging war against this government, and took an active part in their operations. If I am not wrongly informed, he was one of the very party which captured the steamer in question, and transferred her to the insurgents.

You will see that, under these circumstances, it is impossible for me to ask from the Secretary of State authority to prosecute Mr. Jones's claim.

I am, &c.,

GEORGE F. SEWARD.

45TH CONGRESS, 2d Session. } SENATE. { Ex. DOC. No. 49.

LETTER

FROM THE

CHIEF CLERK OF THE WAR DEPARTMENT,

COMMUNICATING

A copy of a resolution of the general assembly of the State of Pennsylvania, in relation to the graves of soldiers of the late war, interred in the cemetery at Harrisburg, in that State.

APRIL 2, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 1, 1878.

The chief clerk of the War Department, in the absence of the Secretary of War, has the honor to transmit to the United States Senate a copy of a preamble and resolution of the general assembly of Pennsylvania, in relation to the graves of soldiers of the late war, interred in the Harrisburg cemetery, and of the letter of the governor of said State, transmitting the same, with a report of the Quartermaster-General upon the subject.

H. T. CROSBY,
Chief Clerk.

To the PRESIDENT OF THE UNITED STATES SENATE.

COMMONWEALTH OF PENNSYLVANIA,
EXECUTIVE CHAMBER,
Harrisburg, March 8, 1878.

DEAR SIR: I have the honor to call your attention to a preamble and resolution of the general assembly of this commonwealth, in relation to the graves of soldiers of the late war, interred in Harrisburg cemetery, a copy of which I herewith inclose to you.

Very respectfully, yours,

J. F. HARTRANFT.

HON. GEORGE W. MCCRARY,
Secretary of War, Washington, D. C.

HOUSE OF REPRESENTATIVES, COMMONWEALTH OF PENNSYLVANIA.

Whereas there are interred in the Harrisburge cmetery a large number of deceased soldiers, who died in Camp Curtin and in the various hospitals located in the city of

Harrisburg during the late war, which were interred by the managers of the said cemetery in order to preserve their identity, and whose graves have been kept in order by the said cemetery association at its own expense; and

Whereas in all cemeteries of the United States, except the one at Harrisburg, the graves of the dead soldiers have been kept in order and grave-stones furnished at the expense of the United States Government; and

Whereas the subject of this neglect has heretofore been brought to the attention of the proper authorities but no action has been taken: Therefore,

Resolved (if the senate concur), That the governor be requested to call the attention of the proper department of the government to the case mentioned in the preamble of this resolution, and urge that the remains of the brave men be properly taken care of and their graves marked with grave-stones.

Extract from the journal, March 4, 1878.

WILLIAM C. SHURLOCK,
Chief Clerk, House of Representatives.

Concurred in by the senate, March 5, 1878.

THOS. B. COCHRAN,
Chief Clerk.

Approved the seventh day of March, anno Domini one thousand eight hundred and seventy-eight.

J. F. HARTRANFT.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 14, 1878.

SIR: I have the honor to return herewith the resolution of the general assembly of the State of Pennsylvania in regard to the graves of Union soldiers interred in the Harrisburg cemetery.

The preamble appears to be based on erroneous assumptions. The cemetery at Harrisburg is not a national cemetery. It does not belong to the United States, and there is, therefore, no law under which the War Department would be authorized to expend money on these the grounds.

Concerning this cemetery, the following description is given in the report of the inspector of national cemeteries for the year 1874:

> The graves are said to number one hundred and fifty-five, but it is not easy to determine their exact number and position, as some bodies have been removed to make room for an avenue, and but few of the graves have any marks.
>
> Eleven marble slabs have been erected by friends; they are inclined at various angles. There are also thirteen head-boards, old and faded, with scarcely a name legible. The graves were all mounded up and well sodded; some of them have sunken in. The grass is neatly cut. Two arbor-vitæs have been planted in this lot, and a few seedling locusts are growing spontaneously.
>
> These burials were made from the hospitals at Camp Curtin, and among them are the remains of fifteen rebel prisoners of war.

With regard to the erection of head-stones, the law as it now stands authorizes these monuments to be placed at the graves only of Union soldiers interred in national cemeteries established under the act of February 22, 1867.

The subject has been brought to the attention of Congress in the two last annual reports (see inclosed extracts), and until the desired authority is granted by the national legislature it is not practicable for the War Department to comply with this and many other similar requests.

The reasonableness and justice of these requests and the propriety of permanently marking these graves are, however, manifest. The longer it is delayed the more difficult will be the task of identifying the graves.

I recommend that the accompanying papers be transmitted to Con-

gress, and that Governor Hartranft be advised of this action and the necessity therefor.

Very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster-General, Brevet Major-General, U. S. Army.

The Hon. SECRETARY OF WAR.

[Extract from report of the Secretary of War, 1876.]

* * * * * * *

There are about seventeen thousand graves of Union soldiers who fell during the war and were buried by the department in various public and private incorporated cemeteries not known as national military cemeteries, which, if authorized by Congress, can be marked with head-stones by using a portion of the $1,000,000 appropriated for head-stones. It is estimated that $60,000 would meet this expense, and its reappropriation for this purpose is recommended.

* * * * * * *

[Extract from report of the Secretary of War, 1877.]

* * * * * * *

Some cemeteries having been declared national military cemeteries since the contracts were made, the contractors have consented to supply them also with head-stones, the estimated cost of which will be about $20,000, and a balance of $192,000 of the original appropriation of $1,000,000 will remain. It is suggested that authority be given by Congress to use a portion of this sum to mark the graves of soldiers buried in private and village cemeteries, to which the law did not extend. Sixty thousand dollars, it is believed, would suffice for this purpose.

* * * * * * *

[Extract from report of the Quartermaster-General, 1876.]

There are about seventeen thousand graves of Union soldiers who fell during the war and were buried by the Quartermaster's Department in various public and private incorporated cemeteries not known as national military cemeteries. Many applications are made for the erection of head-stones over these graves, but the law of June 8, 1872, makes provision only for those interred in the national military cemeteries.

Money enough, after the work in the national cemeteries is completed, will remain from the appropriation of $1,000,000, made on the 3d of March, 1873, to provide all these with permanent monuments, and I recommend that a portion of the balance be reappropriated and made applicable to this purpose. The sum necessary would be $60,000.

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[Extract from report of the Quartermaster-General, 1877.]

* * * * * * *

Some cemeteries have been added to the list since these contracts were made, and the contractors have consented to supply them also with monuments, which will cost some $20,000. A balance will still remain of about $192,000, out of which, if authorized by Congress, the graves of soldiers buried in private village cemeteries, to which the appropriation at present does not apply, may be permanently marked. It is estimated that the sum of $60,000 would suffice for this purpose.

* * * * * * *

[Extract from report of Capt. A. F. Rockwell, 1876.]

* * * * * * *

In connection with this subject, I desire to call attention to the fact that, thus far, no provision has been made for erecting head-stones at the graves of soldiers interred in other than national military cemeteries. In many cities and towns in the Northern and Western States are what are called soldiers' lots—a portion of a private or incorporated cemetery set apart for the burial of soldiers who died during or since the war. The graves were marked soon after the close of the war by the government with head-boards similar to those provided for the national cemeteries. These head-boards have, of course, decayed, and there being no authority under the law, as it now exists, for

replacing them with permanent head-stones, there is some danger that the identity of the graves will be lost unless either the head-boards are renewed, which would only be a temporary expedient, and an expensive one, or head-stones are furnished similar to those erected in the national cemeteries. It is estimated that there are about seventeen thousand graves to be provided with these head-stones, and the numerous applications which the department has received, asking that they be furnished, indicate that there is a very general desire on the part of those interested in the matter that the graves of the soldiers interred in these incorporated and village cemeteries should receive the same attention from the government as is bestowed on those in the national cemeteries.

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[Extract from report of Capt. A. F. Rockwell, 1877.]

* * * * * * *

After paying for the extra work already authorized, a surplus of about $190,000 will remain.

The work has been well done, and the stones add greatly to the fine appearance of the cemeteries. In connection with this subject, I have the honor to renew the recommendation made in my last annual report, that head-stones be erected at soldiers' graves in villages and private cemeteries.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 50.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of March 14, 1878, *information in relation to the claims of laborers and material men arising out of the construction of the revenue-cutter Corwin, at Albina, Oreg.*

APRIL 3, 1878.—Ordered to lie on the table and be printed.

TREASURY DEPARTMENT, *April*, 1878.

SIR: In answer to the resolution of the Senate, dated the 14th ultimo, calling for a copy of the report of Special Agent J. F. Evans in relation to the claims of laborers and material men arising out of the construction of the revenue-cutter Corwin, recently built at Albina, Oreg., together with such recommendations as may be deemed advisable in reference to the payment of such claims, I have the honor to transmit herewith a copy of the report referred to, and to say that a contract was entered into in May, 1875, with the Oregon Iron-Works to build a revenue-vessel for the sum of $92,000, with a stipulation that said vessel should be completed February 28, 1876, and for each day's delay thereafter the sum of $30 should be deducted from the contract-price.

At the time the Oregon Iron-Works went into bankruptcy (November, 1876) there had been paid the sum of $73,600 on their contract. The government took possession of said vessel and finished her in accordance with the provisions of the contract, at an expense for removal, labor, &c., of $10,150.77, leaving a net balance of the original contract-price (if the forfeiture provided for in the contract and incurred by the Oregon Iron-Works be not enforced) of $8,249.23.

The unexpended balance of the appropriation for building the vessel, the only appropriation applicable to the payment of such claims as those mentioned in the inclosed report, was covered into the Treasury, in accordance with section 3691, United States Revised Statutes, and carried to the surplus fund at the close of the fiscal year ending June 30, 1877.

The department, not having considered the claims against the vessel, and not being in possession of full information regarding them, is unable to give an opinion as to what particular ones are valid.

There seems to be no legal obligation upon the government to pay the claims brought against the vessel, and it is peculiarly a matter of legislative discretion whether, upon the equities of the claims, to grant the relief for which application is made.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States, U. S. Senate.

SAN FRANCISCO, *February* 27, 1878.

SIR: I have the honor to state that while at Portland, Oreg., in December last, on official business, at the solicitation of Hon. W. H. Corbett, ex-United States Senator, representing the First National Bank, and of David Goodsell, esq., attorney in behalf of the claimants for labor, I made an inquiry into the facts connected with the construction of the revenue-cutter Corwin and the litigation connected therewith; and learning that Senator Mitchell has introduced a bill for the payment of a portion of the claims against the Corwin, I have thought that it would be rendering the department a service to present in connected form the history of these claims.

I have delayed this report in order to confer with Capt. J. W. White, of the United States Revenue Marine service, under whose superintendence the Corwin was constructed.

In 1876, in response to advertisement for proposals for the building of the vessel, the government received three bids—the first for $112,500; second, $103,000; and third, from the Oregon Iron-Works, for $92,000, to whom the contract was awarded on giving bonds for $50,000.

The department agreed to advance the funds in five different payments of $18,400, each payment at certain stages of the work. Four payments were made, leaving one payment of $18,400 remaining.

Before the completion of the work the Oregon Iron-Works failed, work was suspended, and certain materials furnished for the vessel were included in the assets of the company, which was forced into bankruptcy. The vessel escaped through the litigation which followed.

November 13, 1876, Messrs. Goldsmith & Lowenberg brought suit in the State court against the Corwin for $1,738.35 for labor and materials furnished at the request of the Oregon Iron-Works. The vessel was released under stipulations of the department entered into pursuant to sections 3753–'54, Revised Statutes. The court decided that the plaintiff had a lien upon the vessel, but, owing to possession by the United States, the lien could not be enforced, and the case is now pending on appeal to the supreme court of Oregon, on the point that the government did not plead its personal privilege of exemption of its property from attachment under process of law.

Another suit was brought in the United States court by Coffin & Hendry, San Francisco, for material furnished in rigging the vessel, $3,659.20.

The court decided (1) that the United States did not become owner until final completion and delivery after trial-trip. (2.) That the contractor was in possession during construction, and the vessel was not exempt from lien. (3.) That the contractor having failed, the United States could take the vessel only by exercise of its option to finish the vessel; and then only as the agent of the contractor.

A decree was entered for Coffin & Hendry, and the United States appealed, but suit was subsequently withdrawn on motion of Coffin & Hendry, who explained their action; not because of fear of defeat or reversal of the decision of the court below, but because assured that they would recover sooner by withdrawing the suit.

Pending the appeal the vessel was released upon the United States giving bond.

About January 1, 1877, the cutter Rush removed the Corwin to the middle of the river, where the assignee of the Oregon Iron-Works obtained temporary injunction against Captain White to prevent her removal, which was dissolved, and the vessel proceed to Astoria, where

Steffin (subcontractor) attempted to seize her on his claim for $9,000, but failed, and she proceeded to San Francisco, where she was completed at a cost, it is said, of about $11,000.

There is but one opinion at Portland among the lawyers for either side, including the district attorney, that the decision of the lower court would have been affirmed in the United States circuit court had not Coffin & Hendry withdrawn their suit, and that these claims, or a portion of them, are a lien upon the vessel, and that the least the government can do is to pay the difference between the contract-price and the cost of completion.

It is to be remembered that, owing to the distinct condition of the contract, the cutter was not to be accepted until after completion and a trial trip. The title did not rest in the government, and possession could not have been obtained but by the exercise of privileges and technicalities of law of which private citizens could not have availed themselves.

The Corwin is really a valuable vessel, finely finished, and her probable value is in excess of her cost.

The claims, so far as prosecuted in the courts, have been maintained, and many of those submitted in the accompanying statement are, no doubt, equitably due. Those for labor, skill, and material are notably so—these having actually gone into the construction of the vessel. They are mostly due to poor men, who feel the loss keenly, and it is hardly to be supposed that the government desires to avail itself of any technicality to evade payment to these her citizens.

The chief claim in magnitude is that of the First National Bank of Portland, which advanced money to the Oregon Iron-Works and held their hypothecation of the government payments. They not only advanced, when needed, at one time $37,000, for machinery and freights, but when the vessel was under seizure they employed able counsel to assist the district attorney in securing her release. They had advanced nearly the entire amount of the last payment, and were doing all in their power to aid in the completion of the vessel at the time of the suspension. Their claim is for $17,031.63, which money, as attested by the statement of the superintendent of the Oregon Iron-Works, actually went into the construction of the vessel in the form of labor and material.

There remains about $7,000 of the contract-price unexpended.

The entire amount of the claims here submitted is about $26,000, which, if all are paid, would make the entire cost of the cutter about $112,000, the amount of the leading bid, and really what experts declare has been the actual cost of the vessel.

Should the department desire more detailed information respecting these claims, it could best be obtained from Captain White, who is familiar with them all.

I am, very respectfully, your obedient servant,

J. F. EVANS,
Special Agent.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

Accounts against the revenue-cutter Thos. Corwin.

For labor:	
R. G. Combs, ship's joiner	$186 00
A. Thompson, ship-carpenter	268 75
Wm. J. Henry, ship-carpenter	254 00
Thos. Holmes, ship-carpenter	169 50
R. H. Holmes, ship-carpenter	106 00
R. Gwynn, night-watchman	255 00
John Smith, ship-carpenter	315 75
B. A. Rekdal, ship-carpenter	275 00
T. J. Bulger, ship-carpenter	235 00
Ed. McGee, ship-carpenter	213 50
E. Cashen, ship-carpenter	155 00
E. Britnall, ship-calker	120 00
R. Crawford, ship-calker	90 00
John Thomas, ship-carpenter	97 75
J. J. McKay, ship-carpenter	57 50
A. Hansom, ship-carpenter	63 50
For materials:	
Goldsmith & Lowenberg	1,778 35
Hodge, Snell & Co	265 25
Northrup & Thompson (about)	700 00
John Barrett	41 50
J. F. Powers	67 85
Loch & Montague	125 75
C. E. Emery, New York	150 00
Quimbe & Davidson	2 00
Oregon Furniture Company	2 66
A. Maller & Co	2 57
Laidland & Co	19 37
Everding & Beck	27 00
Clark & Henderson	20 00
Coffin & Hendry, San Francisco, $3,659, (less 4 sails sold by Oregon Iron Works, $500)	3,159 00
First National Bank, Portland, for advances for labor and materials	17,031 63
Total	26,255 18

Claim of J. F. Steffin, subcontractor. Reported against by Attorney Mallory, November 2, 1877, $9,991.98.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 51.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of December 11, 1877, *information in relation to the construction of a dry-dock on a portion of the United States property at Fort McHenry, Maryland.*

APRIL 3, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 3, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in response to the resolution of the Senate dated December 11, 1877, copy of correspondence and reports on the subject of the construction of a dry-dock on a portion of the United States property at Fort McHenry, Maryland.

GEO. W. MCCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

OFFICE BOARD OF ENGINEERS
FOR FORTIFICATIONS, ARMY BUILDING,
New York, February 14, 1878.

GENERAL: The following resolution of the Senate of the United States December 11, 1877: "*Resolved*, That the Secretary of War be directed to comn unicate to the Senate any information he may have in regard to an application of certain citizens of Baltimore for the grant of a portion of the property at Fort McHenry, in the city of Baltimore, for the construction of a dry-dock, upon terms and conditions beneficial to the government, as set forth in a communication to the Secretary of War on the 26th of May, 1877," was transmitted to this board December 18, 1877 from the office of the Chief of Engineers, indorsed as follows:

"The within resolution of the United States Senate of 11th December, 1877, is respectfully referred to the board of engineers for fortifications, for report, after having visited the premises."

Accompanying the resolution were transmitted from the files of the office the following papers:

Citizens of Baltimore to Secretary of War, November 24, 1877.
J. C. Coale to Secretary of War, June 19, 1877.

J. C. Coale to Secretary of War, July 19, 1877.
Major Craighill to Chief of Engineers, July 23, 1877.

The first in order of mention of the above list, the letter of certain citizens of Baltimore to the Secretary of War, states what is asked from the War Department, the grounds on which its concession is asked, and the equivalent to be rendered therefor.

The following extracts epitomize the contents of this paper:

First. General explanatory preamble, as follows:

There are no facilities at any port on Chesapeake Bay for docking vessels of large size for examination or repairs, and even the government dock at Norfolk has not capacity to accommodate vessels of modern build and length. The absence of such facilities militates seriously against the commercial interests of this port, especially at this time, when government is about completing the great work of deepening our channel of approach, and thus enabling us to invite and encourage large steamers to trade here. Owners of large vessels are deterred from sending them to Baltimore, from the knowledge that it would be impossible to dock them for repairs, however urgent the necessity (in case of disaster, for instance), and that ship-owners and underwriters have repeatedly suffered heavy losses from this difficulty.

Second:

The grant asked, in view of the improbability of remunerative results to subscribers to the stock of such a company, and of the great difficulty that has been encountered in obtaining a suitable site for the proposed improvement to the commerce of the city as well as to the government, the undersigned respectfully ask that some assistance be rendered by the government in aid of the proposed undertaking, and the extent to which such assistance is invoked is as follows:

It has been ascertained, on examination, that the location best suited in all respects for the proposed dock is at the northwestern corner of the Fort McHenry tract, and it is respectfully asked that a site for the dock be granted at this point by the government to the proposed dry dock company.

It is thought that from 300 to 350 feet of the water-front will be sufficient for the purpose, extending landwards from the shore-line as far as in your judgment may with propriety be allowed, to be used for the erection of buildings, machinery, and other improvements necessary to the enterprise; the said grant to be made either as a permanent lease, at a nominal rent, or in such other form as may be considered most expedient.

Third. The "consideration" which the government is to receive therefor:

In consideration of such assistance on the part of the government, the dry dock company, on its part, would engage to construct within a reasonable time a first-class dock, of the size and description stated, and to accord to the government the right to use the same for its vessels at any time, free from charge for dockage.

The advantages that would result to the government from such an arrangement are worthy of serious consideration. The free use of such a dock would, even in times of peace, be an important convenience; but in case of war, the geographical advantages of this port—its distance from the sea-coast, and consequent safety from attack; the smooth, deep water, and easy approach for government vessels from any point in the Chesapeake Bay or its tributaries (the Potomac River included)—would serve to render such a dock at this point of very great importance to the government; and we feel assured that the chief officers of the Navy will consider it in this view when the subject is brought to their attention.

The completion of the proposed work would also have a material influence in increasing the revenue from duties on imported merchandise at this port, as many vessels with large cargoes would then arrive here that are now deterred from coming for the reason already stated.

The second paper of the list—a letter of Mr. J. C. Coale, of July 19, 1877, to the Secretary of War—incloses a copy of the honorable Secretary's reply (August 1) thereto. It states—

That the Executive has not the authority to lease the public lands or grant any usufructuary interests in them without the sanction of Congress. The Engineer's Office has had the matter under consideration, and the Chief of Engineers remarks that the necessity for locating the proposed dock on government ground has not been sufficiently examined into; and until the government has made other provisions for the defense of Baltimore, nothing should be done to impair the efficiency of those now existing.

In consequence of the above disclaimer of authority on the part of the War Department, the honorable Secretary is informed, by letter of certain citizens of Baltimore, that "efforts will be made to obtain the sanction of Congress;" and, further—

> Should a call be made on you for information on the subject, pending the action of Congress, we beg leave to respectfully request that, before responding to such call, you will cause a further and more particular investigation to be made, through the Engineer's Office, as we are confident it will be found that there is urgent necessity for locating the proposed dock on the site indicated; that the proposed measure will not in the slightest degree impair the efficiency of existing provisions for the defense of Baltimore; and that it will result most advantageously both to the government and to the commercial interests of this port.

We have in the foregoing very particularly enumerated the documents submitted to us and embodied their purport.

Special duties assigned by the War Department to individual members of this board prevented an immediate visit to the premises. On the 31st of January, 1878, the board assembled in Baltimore, and accompanied by Mr. Decatur H. Miller, president of the Board of Trade, and Mr. James Carey Coale, president of the Merchants' Exchange of Baltimore; Mr. Randolf, chief engineer of the Baltimore and Ohio Railroad Company; and Mr. Simpson, the inventor of the species of dock it is proposed to construct. In visiting the site of Fort McHenry, the party called on Col. (Bvt. Maj. Gen.) W. F. Barry, commanding, communicating to him the object of our visit, and consulting him freely as to the bearing of the project on the uses of the garrison of Fort McHenry.

On our return to Baltimore, the letter, of which accompanying document (marked A) is a copy, was addressed to General Barry. His response will be found in documents herewith (marked B and C).

We subsequently received from Messrs. Decatur H. Miller and James Carey Coale a letter (herewith accompanying, marked D) asking delay in action until further communications should be received.

Further communications were received as follows:

Letter herewith (marked E) from Mr. John W. Garrett, president of the Baltimore and Ohio Railroad Company.

Letter herewith (marked F) from Messrs. Miller and Coale, on behalf of themselves and other citizens. The main purport of this latter letter, while reiterating the general arguments, as we have already quoted them from their first communication, is to modify somewhat the limits of area asked for. They request that instead—

> Of the piece of land described in the bill now before Congress, you will recommend that a grant be made by the government to the Baltimore Dry Dock Company, of Baltimore City, of so much of the Fort McHenry tract of land as lies between the northwestern boundary-line (the present fort wall) of said tract and a line parallel thereto, and distant four hundred and fifty feet therefrom, and between the northwest branch of the Patapsco River and a line parallel to the extended line of the northern side of Fort avenue, and distant two hundred and fifty feet therefrom.

They also inform us that they have—

> Consulted with General Barry, commanding at Fort McHenry, and are pleased to state that the change we now suggest in the lines of the proposed grant will entirely obviate all the objections he advanced (on the occasion of your recent visit to Fort McHenry) to the grant as at first proposed, namely, the proximity of the dock-yard to the hospital and magazine, and the curtailment of the drill-ground. * * *

Furthermore—

> In the construction of the dry-dock, solid bulkheads of great strength will be built, extending a long distance into the harbor, and this will facilitate the reclamation by government of a piece of land materially larger than the quantity of land to be granted and this reclaimed land can be formed into an excellent drill-ground.
>
> General Barry has authorized us to inform you as above, and to state that he will furnish these views in writing if you so request.

They forward to us (herewith, marked G) a letter addressed by the honorable Secretary of the Navy to the mayor, president of the city council of Baltimore, and others, stating that the department "takes great interest in everything calculated to impr ove the commercial facilities of Baltimore, and appreciates the advan tages which would follow the construction of the contemplated dock."

Having thus set forth fully the matter as it is presented to us, we now proceed to state our views.

The project for the defense of Baltimore, as determined upon by the Board of Engineers of 1826, and as maintained at this day by the present board, requires two forts on the outer line, viz, one at Hawkins Point and the other opposite on Soller's Flats, and that Fort McHenry should be maintained as a second barrier. Hawkins Point, however, is not in the possession of the United States, and Fort Carroll (a casemate-work but partially built) needs costly changes, involving the use of iron shields, to adapt it to the modern requirements of sea-coast defense. Fort McHenry, therefore, is now and must remain for many years almost the sole defense for the entrance to Baltimore Harbor; and in that view additional batteries, suited for lar ge guns, are in process of construction exterior to the main work.

As stated in the language of the honorable Secretary of War (already quoted, letter of August 1, 1877, in which he uses the words of the Chief of Engineers), "until the government has made other provisions for the defense of Baltimore, nothing should be done to impair the efficiency of those now existing."

The efficiency of defensive positions depends, first, upon the character of the works themselves, including armament; second, upon their supplying to the garrison all necessary conveniences for working the armament and adequate areas for quarters, magazines, hospitals, storehouses, and drill grounds.

This board is of the opinion that the area asked for by the petitioners, as defined on accompanying tracing, marked H, by dotted lines, will not be required for additional batteries, nor will its occupation as proposed interfere with the service of the batteries at this post in a contest with an enemy's fleet.

Whether the giving it up will seriously interfere with the needs of a garrison in the fulfillment of their various duties during peace and war is a question that it seems to us should receive the attention of the General of the Army. The views of General Barry meet this question in part; that is, as limited to the present status of the position.

Other points, however, are touched upon either in the letters which have been addressed to the War Department, or in the honorable Secretary of War's reply of August 1, 1877.

In the latter we find the remark, "The necessity for locating the proposed dock on the government ground has not been sufficiently examined into."

We do not understand the petitioners to allege that there is no other site attainable which would answer all the purposes; but that this is the most eligible one, and more especially because, for reasons given, they believe the government will derive a benefit fully compensating for the value of the site which it cedes, and while rendering a full equivalent they will be relieved from the cost of purchase elsewhere.

The benefits to be derived by the United States from the construction of the dry dock is a matter of which we do not feel ourselves to be the proper official exponents.

Finally, it is set forth in the letter to us of the petitioners (marked F),

that in the construction of the dry dock "solid bulkheads of great strength will be built; * * * and this will facilitate the reclamation by government of a piece of land materially larger than the quantity to be granted," &c.

Such reclamation requires, beside the *bulkheads* along the subaqueous portion of the grant now belonging to the site of Fort McHenry, an expensive new sea-wall, built mostly in deep water.

We believe the government has hardly sufficient motive for obtaining so expensively such an addition to the site.

The papers referred to in this report are transmitted herewith.

Respectfully submitted.

J. G. BARNARD,
Colonel of Engineers and Brevet Major-General.
Z. B. TOWER,
Colonel of Engineers and Brevet Major-General, U. S. A.
H. G. WRIGHT,
Lieutenant-Colonel of Engineers and Brevet Major-General.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers United States Army,
Washington, D. C.

A.

UNITED STATES ENGINEER'S OFFICE,
Baltimore, Md., January 31, 1878.

COLONEL: The following resolution of the United States Senate has been referred to the Board of Engineers for Fortifications for report after having visited the premises:

"*Resolved*, That the Secretary of War be directed to communicate to the Senate any information he may have in regard to an application of certain citizens of Baltimore for the grant of a portion of the property at Fort McHenry, in the city of Baltimore, for the construction of a dry dock, upon terms and conditions beneficial to the government, as set forth in a communication to the Secretary of War, on the twenty-sixth of May, eighteen hundred and seventy-seven."

Major Craighill will forward you with this a sketch showing the outline of the portion of the property at Fort McHenry which the representatives of the citizens of Baltimore (Mr. John C. Coale, president of the Merchants' Exchange, and Mr. Decatur Miller, president of the Board of Trade) pointed out to us on our visit to the premises to-day, as the area necessary for the purposes.

The sketch will also show the location of the bulkhead line, as it is expected to be established by the legislature of Maryland, and that portion of the area so conceded to the property at Fort McHenry as will also be required for the purposes of the proposed dry-dock.

The board desires an expression of your views as to the compatibility of the grant demanded with the exigency for area for the necessary uses of the garrison of Fort McHenry.

I am, very respectfully,

J. G. BARNARD,
Corps of Engineers, Brevet Major-General, U. S. A.,
President of Board of Engineers.

Col. W. F. BARRY,
Brevet Major-General, Commanding at Fort McHenry.

B.

HEADQUARTERS FORT MCHENRY, MD., *February* 2, 1878.

COLONEL: I have the honor to acknowledge the receipt of your letter of yesterday's date, asking an expression of my views as to the compatibility with the exigency for area for the necessary uses of the garrison of Fort McHenry of a grant to citizens of Baltimore of a portion of the public land appertaining to the fort.

Your letter is accompanied by a sketch, showing the outline of the portion of the property which the representatives of the applicants pointed out to you as the desired area.

I reply as follows:

1st. The garrison of Fort McHenry is necessarily composed of artillery troops. For the past forty years one or more mounted batteries have been a portion of such garrison.

For the special accommodation of these mounted troops, stables, gun-sheds, and other buildings have, at considerable cost, been located here.

The drills, parades, and other military exercises of artillery require a large area of ground. The whole of the area now available is essential for the purposes named.

The portion asked for by the applicants is very nearly one-third of the area now available. From the remaining two-thirds there must be a still further deduction of area for the site of the three buildings which are now located upon the ground to be ceded. The area that would remain would be wholly insufficient for the indispensable military exercises of the garrison.

2d. If the cession is made as asked for, the post-hospital (a building partly brick and partly wood, and worth say $2,000) would be within fifty yards of the dock-yard, and the principal powder-magazine of the fort (a brick building worth say $15,000, and which usually stores from 300 to 500 pounds of gunpowder) would be within seventy-five yards of the dock-yard.

The noises inseparable from the various industries of a dock-yard would render the hospital untenable for the sick, and such close proximity of the engine-houses and lofty smoke-stacks of the dock-yard would render the powder-magazine dangerous to the dock-yard as well as to the fort.

3d. Upon the area desired to be ceded three government buildings, occupied as quarters for married soldiers and laundresses, and essential for that purpose, are now located.

If the land is ceded to the applicants, these buildings will have to be taken down, removed, and rebuilt, and portions of a fourth building will have to be removed. This work will cost at least $5,000.

I am, colonel, very respectfully, your obedient servant,

WILLIAM F. BARRY,
Colonel Second United States Artillery,
Brevet Major-General United States Army,
Commanding Post.

Col. J. G. BARNARD,
United States Corps of Engineers, President of Board.

C.

HEADQUARTERS, FORT MCHENRY, MARYLAND,
February 4, 1878.

COLONEL: In connection with my letter to you of 2d instant, in reply to yours of the day previous, asking an expression of my views with regard to the effect upon the necessary military demands of a garrison at this post of the cession of land now asked for by citizens of Baltimore, it is proper that I should make the following additional statement: If the dotted line, marked upon the sketch which accompanied your letter as "bulkhead-line proposed by United States commissioners," has been or is to be adopted as the port warden's line; and if the water space intervening between the present sea-wall and that line can be, and is likely to be, filled in, an area greater than we now have, and quite sufficient for all ordinary military purposes, will be created.

I am, colonel, very respectfully, your obedient servant,

WILLIAM F. BARRY,
Colonel, Second United States Artillery, Brevet Major-General United States Army,
Commanding.

Col. J. G. BARNARD,
United States Corps Engineers, President of Board.

D.

BALTIMORE, *February* 1, 1878.

GENTLEMEN: We respectfully ask that you will delay further action in regard to the proposed grant of a site for a dry-dock at Fort McHenry until we, in behalf of citizens of Baltimore who signed the memorial addressed to the honorable Secretary of War on that subject, have an opportunity to communicate further with you in regard to it.

With much respect, your obedient servants,

DECATUR H. MILLER,
President Board of Trade of Baltimore.
JAS. HENRY COALE,
President Merchants' Exchange.

To the BOARD OF ENGINEERS OF FORTIFICATIONS.

BALTIMORE AND OHIO RAILROAD COMPANY,
OFFICE OF THE PRESIDENT,
Baltimore, February 6, 1878.

GENTLEMEN: Referring to the communication addressed to you this date from Mr. D. H. Miller, president of the board of trade, and Mr. James Carey Coale, president of the Merchants' Exchange, of this city, I beg to remark that I entirely concur in all they have stated therein, and I hope your views may coincide with the opinion of the officers of the Navy, and of our citizens, in regard to the important advantages—national and commercial—to result from the arrangement proposed, and that you may regard these advantages as being more worthy of consideration than any slight objection to the proposed grant that can possibly be presented.

Allow me to express my regret that very important engagements at New York prevented me from being in this city on Thursday last, on the occasion of your visit to Fort McHenry.

I would have been very glad to have met you, and was much disappointed that I could not do so.

I am, with great respect, your obedient servant,

JOHN W. GARRETT.

General BARNARD, president; and General TOWER and General WRIGHT,
Board of Engineers for Fortifications, New York.

F.

BALTIMORE, *February* 6, 1878.

GENERAL: We have the honor to acknowledge receipt of your letter of 2d instant.

We thank you for suspending action in regard to the site for a dry-dock at Fort McHenry until this communication shall have reached you, and we now respectfully beg to state:

In order to avoid the too close proximity of the proposed dock-yard to the hospital and magazine buildings at Fort McHenry, and at the same time allow sufficient space for the proposed dry-dock and its appendages, we now respectfully request, on behalf of ourselves and other citizens of Baltimore who made application for the grant, that, instead of the piece of land described in the bill now before Congress, you will recommend that a grant be made by the government to Baltimore Dry-Dock Company, of Baltimore City, of so much of the Fort McHenry tract of land as lies between the northwestern boundary line (the present fort wall) of said tract and a line parallel thereto, and distant 450 feet therefrom, and between the northwest branch of the Patapsco River and a line parallel to the extended line of the northern side of Fort avenue, and distant 250 feet therefrom (250 feet from Fort avenue).

We have conferred with Major-General Barry, commanding at Fort McHenry, and are pleased to state that the change we now suggest in the lines of the proposed grant will entirely obviate all the objections he advanced (on the occasion of your recent visit to Fort McHenry) to the grant as at first proposed, namely, the proximity of the dock-yard to the hospital and magazine, and the curtailment of the drill-ground. The change now proposed in the boundaries of the grant increases the distance between the buildings referred to and the dock-yard, making it (the distance) 250 feet greater than was originally contemplated, and no portion of the drill-ground is embraced within the lines now proposed.

Furthermore, in the construction of the dry-dock, solid bulkheads of great strength will be built, extending a long distance into the harbor, and this will facilitate the reclamation by government of a piece of land materially larger than the quantity of land to be granted, and this reclaimed land can be formed into an excellent drill-ground.

General Barry has authorized us to inform you as above, and to state that he will furnish these in writing if you so request.

In order to obtain space sufficient for the dock and its auxiliaries, we have, after consulting General Barry and obtaining his acquiescence, deemed it necessary to ask that the width of the tract granted be made 450 feet instead of 350 feet as originally asked, the additional 100 feet being in lieu of the reduction of 250 feet from the length of the tract originally described.

In the arrangement proposed by our citizens, two important objects are sought to be obtained, namely, the construction of an efficient dry-dock, and the establishment of works adequate to the repair of iron steamships. These works will form an important auxiliary to the dock, and are almost as necessary as the dock itself.

In asking a site for these important improvements, our citizens have confined their application to a very small area, and it is hoped their request will be granted. The urgent need of these works, in the interest of commerce, has already been explained to you, and in reference to the advantages they will afford the government, we beg to

inclose a letter from the Secretary of the Navy, addressed to the mayor of our city, and others, and also to state that Rear-Admiral Howell has verbally expressed cordial approval of the proposed arrangement, and a high appreciation of the benefits to be derived from it by the government, particularly in time of war.

In conclusion, allow us to add, we trust that your investigations have convinced you that the proposed improvements are urgently needed at this port, that the plan proposed is the only feasible way of securing them, that no other locality is so well adapted to them as the site in question, and that the granting of that site will not in the least degree impair the efficiency of the defenses of Baltimore.

We are, with great respect, your obedient servants,

DECATUR H. MILLER,
President of the Board of Trade.
JAS. CAREY COALE,
President Merchants' Exchange of Baltimore.

Maj. GEN. J. G. BARNARD,
President Board of Engineers for Fortifications, New York.

G.

NAVY DEPARTMENT,
Washington, January 24, 1878.

GENTLEMEN: In reply to your letter of the 31st ultimo, in which you ask my attention to the bill recently introduced in the United States Senate, authorizing a grant of a site for a dry-dock at Fort McHenry, to some of the advantages that would result to the government from the proposed arrangement, and also to the benefits to be derived from it in the interests of commerce, I have the honor to say that the department takes a deep interest in everything calculated to improve the commercial facilities of Baltimore, and appreciate the advantage which would follow the construction of the contemplated dock.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Hon. GEO. P. KANE, *Mayor;* Hon. OTIS KEITHOLTZ, *President of City Council, and others, of Baltimore, Md.*

[Indorsements.]

OFFICE CHIEF OF ENGINEERS.
Washington, February 26, 1878.

Respectfully returned to the honorable the Secretary of War.

The question having been referred to the Board of Engineers for Fortifications, the board report as follows:

"The board is of the opinion that the area asked for by the petitioners, as defined on accompanying tracing (marked H) by dotted lines, will not be required for additional batteries, nor will its occupation as proposed interfere with the service of the batteries at this post in a contest with an enemy's fleet. Whether the giving it up will seriously interfere with the needs of a garrison, in the fulfillment of their various duties during peace and war, is a question that, it seems to us, should receive the attention of the General of the Army."

I concur in these views, and in the opinion of the board that the extension of the grounds available for military purposes to the bulkhead-line will be expensive.

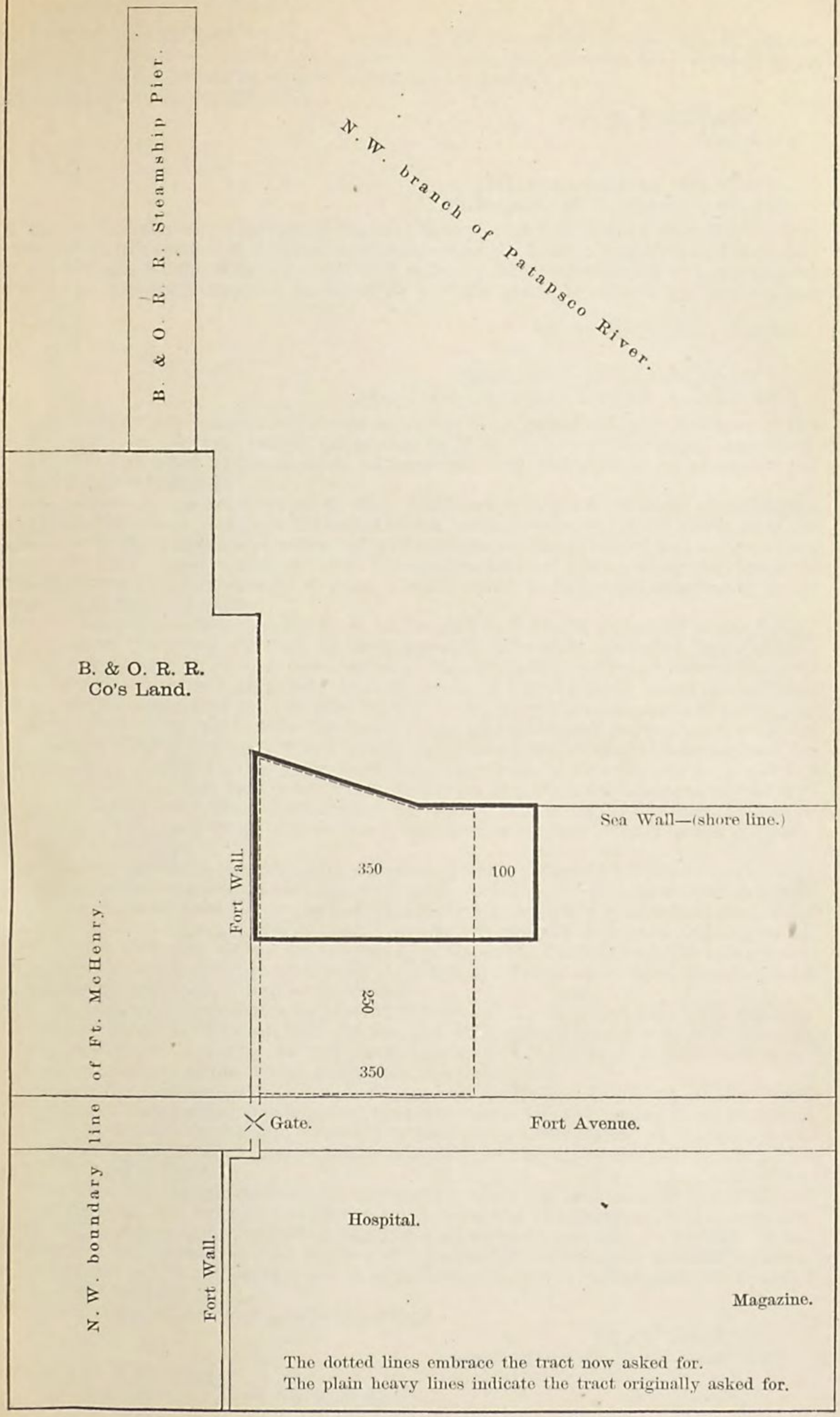
The construction of the proposed dry dock will undoubtedly be highly beneficial to the commerce of Baltimore.

The necessity for establishing it upon the fort grounds appearing to be chiefly a pecuniary one, it, together with the consideration of the question whether the compensation offered the United States for the site is an equivalent value, scarcely belongs to this department.

A copy of the report of the Board of Engineers for Fortifications is transmitted herewith.

A. A. HUMPHREYS,
Brigadier-General, Chief of Engineers.

Respectfully referred to the General of the Army for consideration and remarks, inviting attention to the expression of opinion of the board "whether the giving it up


N. W. branch of Patapsco River.
B. & O. R. R. Steamship Pier.
B. & O. R. R. Co's Land.
Fort Wall.
350
100
Sea Wall—(shore line.)
250
350
N. W. boundary line of Ft. McHenry.
Gate.
Fort Avenue.
N. W. boundary line
Fort Wall.
Hospital.
Magazine.
The dotted lines embrace the tract now asked for.
The plain heavy lines indicate the tract originally asked for.

(the area in question) will seriously interfere with the needs of a garrison in the fulfillment of their various duties during peace and war, is a question that, it seems to us, should receive the attention of the General of the Army."

By order of the Secretary of War.

H. T. CROSBY,
Chief Clerk.

HEADQUARTERS OF THE ARMY,
Washington, D. C., February 27, 1878.

Respectfully referred to Inspector-General Marcy, who will inspect Fort McHenry in person, and report whether the sale or alienation of the land in question will seriously damage the site for the usual garrison and military uses, and whether an equally good site for the dry-dock may not be found on private property outside the government limits.

W. T. SHERMAN, *General.*

HEADQUARTERS OF THE ARMY,
INSPECTOR-GENERAL'S OFFICE, *March 4, 1878.*

SIR: Pursuant to the orders of the Secretary of War, contained in your letter of the 27th ultimo, I, on the 1st instant, proceeded to Fort McHenry, Maryland, and made the inspection directed by the General of the Army, and have the honor to submit the following report thereon:

That portion of the reservation of Fort McHenry which the citizens of Baltimore originally petitioned Congress for constituted an important part of the ground required for drills, parades, and other military exercises of the garrison, and, as the entire area of the present reservation is too circumscribed to meet the existing requirements of the garrison, the alienation of so large a tract would have proved manifestly detrimental to military interests.

But, in view of the fact that Mr. D. H. Miller and J. C. Coale, in behalf of the citizen petitioners for the grant, in their letter marked F, herewith appended, have recommended a modification in the boundaries of the tract applied for, whereby the area would be reduced to such an extent that it would not appreciably affect the military status, and the amount of ground now wanted being only three acres out of something near fifty-three embraced within the reservation, and this small portion now occupied with old and dilapidated laundresses' quarters, which have prevented its being used for other military purposes for a long time, the objections to the project, in a military sense, seem for the most part to have been removed, and the establishment of the dry-dock upon the site now desired would not be in such proximity to the magazine as to jeopardize its safety, or cause any serious impediments to defensive or other military operations of the post.

There is no attainable site for the dry-dock on private property without the reservation-limits possessing equal advantages with this; and the only ground outside, not permanently occupied by the Baltimore and Ohio Railroad Company, that would at all subserve the purposes required, is that contiguous to the western fort-wall, which ground is now owned by a man who, I am informed by Mr. J. W. Garrett and the two gentlemen before named, is not disposed to sell it except upon such exorbitant terms that no private association could afford to purchase.

Besides, if it were practicable to procure this site at a reasonable price, the position is so distant from the channel, that the erection of the dock here would involve such heavy expenditures in filling up and dredging, that it is doubted if any stock company or private association would undertake the enterprise.

If, as has been suggested, it should be deemed advisable to fill up to the "port warden's line," the water-front adjacent to tract asked for, the reclamation resulting therefrom would add eight and one-half acres to the reservation, or, deducting the three acres for the dry dock, the entire area would be increased five and a half acres beyond its present limits.

I am assured by the aforementioned gentlemen that the reclamation specified can be accomplished with very little expense aside from the construction of the outer sea-wall or bulkhead, as nearly all the ocean steamers come to this port in ballast for return freights, and would be glad to drop this ballast gratuitously at a locality so convenient as this to their moorings, and it is estimated that this ballast amounts to about four hundred tons per day.

Very respectfully, your obedient servant,

R. B. MARCY,
Inspector-General, United States Army.

General E. D TOWNSEND,
Adjutant-General, United States Army.

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., March 28, 1878.

SIR: Mr. Garrett, president of the Baltimore and Ohio Railroad, called yesterday, after you had left the office, with Senators Dennis and Whyte, to discuss the proposed dry-dock on the Fort McHenry reservation, and, according to their request, I have indicated to you verbally their line of argument. The best site for a sufficient dry-dock in Baltimore Harbor is found on the northwest corner of the government reservation, and will take about three acres. The board of Army engineers report that the use of this ground for a dry-dock will not interfere with the batteries of Fort McHenry in defending the ship channel, and the commanding officer of Fort McHenry, General W. F. Barry, reports that the ground can also be spared for this use, leaving sufficient ground for the necessary barracks, stables, and storehouses. The only question which remains is, whether the company ought not to make some compensation to the United States for this ground, either in money or by some equivalent advantage.

In my last indorsement of March 4, 1878, I suggested that the dry-dock company should build a sea-wall across from the head of their dock to the present wharf and fill in behind with the ballast of ships and earth, so as to add this triangular piece of ground, estimated at seven or eight acres, to the present reserve.

Mr. Garrett and friend have convinced me that the cost of this work will far exceed the present value of the land they apply for, and that the dry-dock company prefer to pay for this land by the free use to public vessels of the dock itself when completed.

The Army authorities feel so little interest in a dock of any sort that we do not give sufficient weight to such a proposition; but I recognize fully the necessity of such a dock for naval vessels and for the large ships now used in the commerce of the world, that I beg to withdraw the condition-precedent in my indorsement of March 4, instant, and to give my full consent to the surrender of the ground in question on such conditions as may seem to you proper and right.

With great respect,

W. T. SHERMAN, *General.*

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

Official copies:

E. D. TOWNSEND,
Adjutant-General.

W. D., A. G. O., *April* 2, 1878.

45TH CONGRESS, 2d Session. } SENATE. { Ex. Doc. 51, Part 2.

LETTER

FROM

THE SECRETARY OF WAR,

INVITING ATTENTION TO

An inaccuracy in the printed sketch accompanying the published report of the Board of Engineers for Fortifications, relative to the construction of a dry-dock on a portion of the reservation at Fort McHenry, Maryland.

APRIL 25, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 23, 1878.

SIR: Referring to Senate Executive Document No. 51, relative to the construction of a dry-dock on a portion of the reservation property at Fort McHenry, Maryland, I have the honor to transmit the inclosed letter from Col. Z. B. Tower, Corps of Engineers, inviting attention to an inaccuracy in the printed sketch accompanying the published report of the Board of Engineers for Fortifications.

Very respectfully, your obedient servant,

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT
United States Senate.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.:

GENERAL: I desire to call your attention to an inaccuracy in the published report of this board as to granting a portion of the site of Fort McHenry to a Baltimore company for dry-dock purposes.

On the sketch occur these two printed lines:

"The dotted lines embrace the tract now asked for."

"The plain heavy lines indicate the tract originally asked for."

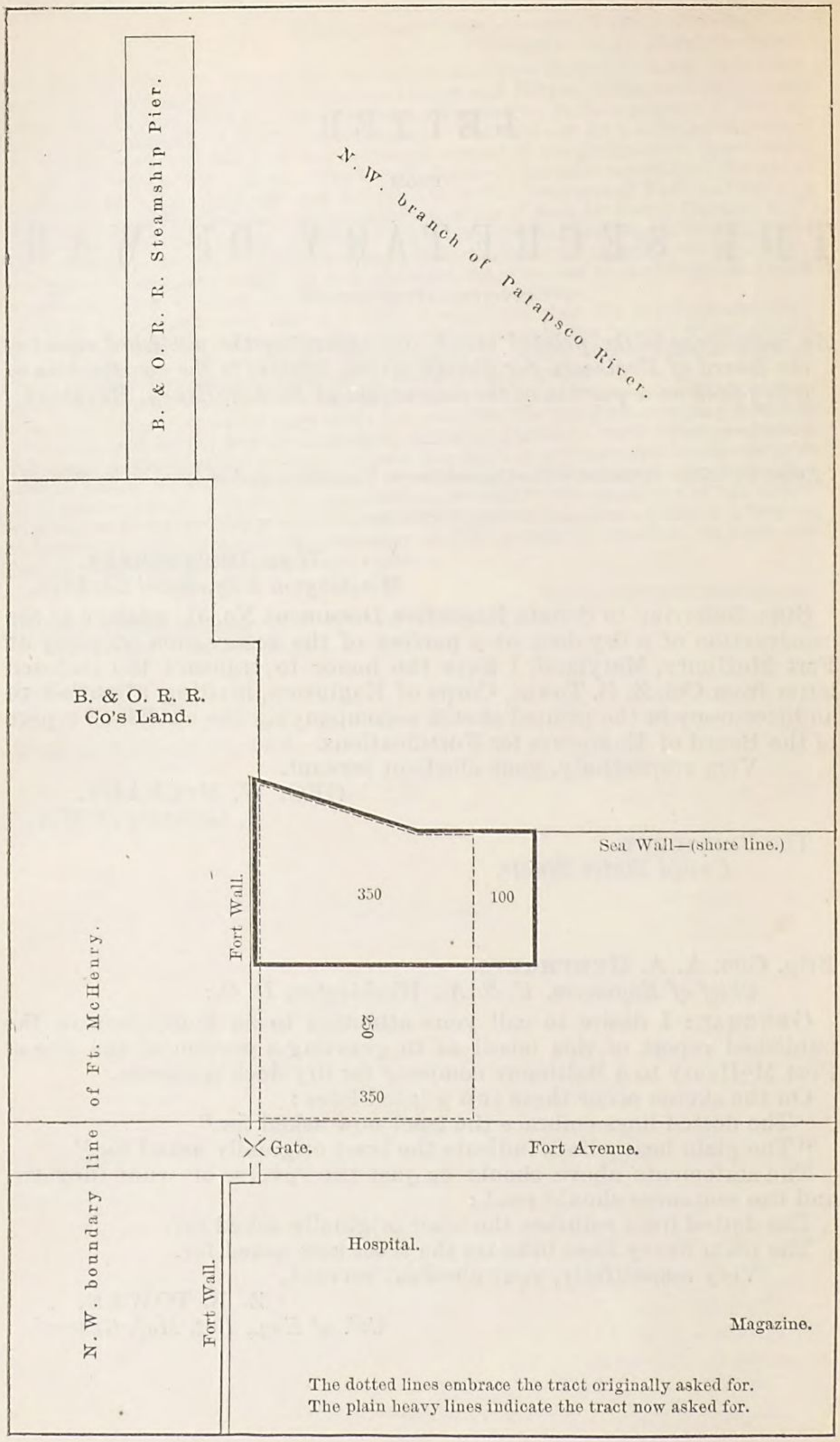
The statements above should be just the reverse of what they are, and the sentences should read:

The dotted lines embrace the tract originally asked for.

The plain heavy lines indicate the tract now asked for.

Very respectfully, your obedient servant,

Z. B. TOWER,
Col. of Eng., Bvt. Maj. General.


N. W. branch of Patapsco River.
B. & O. R. R. Steamship Pier.
B. & O. R. R. Co's Land.
Fort Wall.
350
100
250
350
Sea Wall—(shore line.)
N. W. boundary line of Ft. McHenry.
Gate.
Fort Avenue.
Fort Wall.
Hospital.
Magazine.
The dotted lines embrace the tract originally asked for.
The plain heavy lines indicate the tract now asked for.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 52.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A copy of letters and a telegram from Col. B. H. Grierson, Tenth Cavalry, objecting to the reinstatement or reappointment of officers dismissed from the Tenth Cavalry; also, a copy of the report of the Adjutant-General on the subject.

APRIL 4, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 3, 1878.

The Secretary of War has the honor to transmit to the United States Senate, for the consideration of the Committee on Military Affairs, copy of letters and telegram from Col. B. H. Grierson, Tenth Cavalry, objecting to the reinstatement or reappointment of officers dismissed from the Tenth Cavalry; also, copy of report of the Adjutant-General on the subject.

GEO. W. MCCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

ADJUTANT-GENERAL'S OFFICE,
Washington, March 20, 1878.

The officers dismissed from the Tenth Cavalry, to whom Colonel Grierson evidently refers, are Capt. George A. Armes, dismissed June 7, 1870; Capt. William L. Foulk, dismissed December, 1873; First Lieut. Thomas J. Spencer, dismissed April 24, 1875.

Spencer has already been restored under authority of a special act, and his resignation has been accepted to take effect June 3, 1878.

An act has passed both houses of Congress for the restoration of Captain Foulk, and its approval has been recommended by the Secretary of War.

The case of Captain Armes has been before Congress every session since his dismissal.

In 1874 an act was passed giving him an honorable discharge (with a year's pay) in lieu of dismissal.

An act providing for his restoration was passed the second session Forty-fourth Congress, but as it was not approved, and as Congress adjourned less than ten days after its passage, it did not become a law.

The military committees of both Houses, present Congress, have already reported favorably on a bill empowering the President to reappoint him.

All the record facts, including protest of officers of the Tenth Cavalry adverse to such legislation, have been from time to time furnished the committees.

The proposed law only *authorizes* the President to appoint—he can decline if he sees fit.

Respectfully submitted to the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

[Through Headquarters Department of Texas.]

HEADQUARTERS TENTH CAVALRY,
Fort Concho, Texas, January 7, 1878.

SIR: I have the honor to request that I may be informed whether the present status of First Lieut. Thomas J. Spencer, Tenth Cavalry, will in any way affect the promotion of First Lieut. Robert G. Smither, and Second Lieut. Thaddeus W. Jones. If so, I recommend that the order accepting the resignation of Lieutenant Spencer be so amended as to accept his resignation previous to December 20, 1877, the date of Captain Little's dismissal.

Lieutenant Spencer should never be promoted in the regiment, as he is absolutely worthless as an officer, and his promotion at this time would delay the advancement of two of the most efficient and worthy officers of the regiment.

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding Regiment.

ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.

The following are copies of indorsements on the foregoing:

[First indorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Texas, January 12, 1878.

Respectfully forwarded through Headquarters Military Division of the Missouri. Recommendation approved.

E. O. C. ORD,
Brigadier-General, United States Army, Commanding.

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, January 19, 1878.

Respectfully forwarded to the Adjutant-General of the Army.

P. H. SHERIDAN,
Lieutenant-General, Commanding.

[Through Headquarters Department of Texas.]

HEADQUARTERS TENTH CAVALRY,
Fort Concho, Texas, January 21, 1878.

SIR: I have the honor to recommend, in behalf of the officers of the regiment and for the general good of the service, that the honorable Secretary of War, General of the Army, and Adjutant-General use their influence to prevent the reinstatement or reappointment of officers dismissed from the Tenth Cavalry, unless special recommendation be made in their cases from regimental headquarters.

I am, sir, very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding Regiment.

ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

The following are copies of indorsements on the foregoing:

[First indorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., January 25, 1878.

Respectfully forwarded through Headquarters Military Division of the Missouri.

E. O. C. ORD,
Brigadier-General, United States Army, Commanding.

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, January 30, 1878.

Respectfully forwarded to the Adjutant-General of the Army.
In the absence of the Lieutenant-General commanding,

R. C. DRUM,
Assistant Adjutant-General.

[Telegram.]

CONCHO, TEX., *March* 19, 1878.

General W. T. SHERMAN, *Washington, D. C.:*

Please prevent the reappointment of any officer dismissed from the Tenth Cavalry. See my official letters forwarded Adjutant-General last January, seventh and twenty-first.

GRIERSON, *Colonel.*

WAR DEPARMENT,
ADJUTANT-GENERAL'S OFFICE, *March* 28, 1878.

True copies.

SAML. BRECK,
Assistant Adjutant-General.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. 52, Part 2.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A copy of a communication from Capt. T. J. Spencer, in connection with the letters and telegram from Col. B. H. Grierson, Tenth United States Cavalry.

MAY 6, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 2, 1878.

The Secretary of War has the honor to transmit to the United States Senate, for the information of the Committee on Military Affairs, a copy of a communication from T. J. Spencer, brevet captain United States Army, dated the 25th ultimo, in connection with the letters and telegram from Col. B. H. Grierson, Tenth Cavalry, published in Senate Executive Document No. 52, present session.

GEO. W. McCRARY.
Secretary of War.

The PRESIDENT *United States Senate.*

WASHINGTON, D. C., *April 25, 1878.*

SIR: Referring to your communication of the 3d instant, transmitting to the United States Senate copies of certain "letters and telegrams from Col. B. H. Grierson, Tenth Cavalry," I have the honor, respectfully, to submit, in answer to so much of the same as refers to myself, the copies hereto appended of certain testimonials and other papers in my behalf covering the entire period of my military service. They include expressions of every commanding officer under whom I have served as a commissioned officer, including the indorsement (in 1871) of Colonel Grierson on my application for exchange with Lieutenant Townsend, of the Thirteenth Infantry. In this connection particular attention is respectfully invited to papers numbered 1, 2, 5, 8, 9, 11, 12, 13, 15, 16, 19, and 20. In this reference, which is forced upon me by Colonel Grierson's reference to me in the "letters and telegrams" referred to, I desire earnestly to disavow any intention to be disrespectful to my superior officer. I would further invite your attention to the fact that my term of service under Colonel Grierson's immediate eye was comparatively brief, as he was only at intervals in command of or present with

the troops with whom I was doing duty. On the other hand, the officers of the regiment who have kindly testified in my behalf were, most of them, continuously with me, in all kinds of service, since joining.

I wish in conclusion to add that, in submitting this defense, I seek simply to protect my reputation, which I feel has been frequently, in different quarters, unjustly assailed by Colonel Grierson for the gratification of personal feelings. I have always sought to perform my duties faithfully and fully, and to uniformly maintain that attitude toward my superiors and comrades enjoined in the regulations, and as to whether I have succeeded in the main or failed the accompanying papers will testify. In view of what they show, and of the fact that in his *ex parte* denunciation Colonel Grierson can submit no instance in which any of his statements against me are well founded by proof, I maintain that he has no right to officially assail me except through specifications drawn in proper legal form, laid under appropriate charges, and submitted in the prescribed manner before the proper tribunal.

Several important papers in my case, heretofore submitted, cannot be found among the files of the Adjutant-General's Office, War Department, but in connection with the records of my trial the accompanying, for purposes of defense, may suffice. With your approval, I respectfully request that these papers may be submitted for the consideration of the Senate Committee on Military Affairs, in connection with the "letters and telegrams" from Colonel Grierson accompanying your letter of the 3d instant.

I have the honor to be, your obedient servant,

T. J. SPENCER,
Brevet Captain United States Army.

To the honorable the SECRETARY OF WAR.

1.

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
Washington, D. C., June 16, 1875.

Respectfully returned, and attention invited to the report of this bureau, made on the 15th of January past, reviewing the record of the trial of this officer. He having been dismissed from the service by sentence of the court, subsequently formally approved by the reviewing authority, an application is now made for his reappointment. The petition for this purpose, addressed to the President, is signed by the governor and adjutant-general of Michigan, the collector of customs and postmaster at Detroit, Samuel A. McCoskrey, bishop of Michigan, and a number of other prominent citizens, among them the Hon. A. S. Williams, who, in referring to the petition, thus writes to the Secretary of War:

> Our leading citizens, including most of the State and Federal officers, have signed a recommendation for his restoration to the Army. They have known him from his boyhood and hold him in high esteem. During the late war, he served in the western armies gallantly and capably, of which he has abundant testimonials, which you will recognize as from some of our best officers. We cannot believe here that his offenses, which grew out of some domestic trouble at a time of severe suffering, and with his commanding officer, can be of so serious a character as to merit this severe punishment.

After declaring the offense, for which this officer was dismissed, to

have been "rash and unpremeditated," and since "sorely deplored" by him, the petition thus speaks of his character and past services:

His record, your excellency, and the testimony in his defense will, we think, bear us out in this declaration. Many of us have known Mr. Spencer, either personally or by reputation, since his boyhood, and we can testify to his integrity as a man, and his character as a prompt and gallant soldier in battle and on the march. When in April, 1861, the echoes of Fort Sumter's guns reached his native city he, with others of our best young men, prepared at once for the front. Through McClellan's Western Virginia campaign, at the battle of Rich Mountain—the first of the war—and through the campaigns that followed, conducted by Buell, Rosecrans, Thomas, and Sherman, from May, 1861, to September, 1865, in battle, siege, and rebel prisons, through sunshine and storm, heat and cold, on all kinds of duty, and under all circumstances, he behaved as a brave soldier and modest gentleman should.

Warm as are these words of commendation, they are believed to be sustained and fully justified by the numerous testimonials now on file in the department, and which have been carefully examined by this bureau. These testimonials from high and trustworthy sources are too numerous to mention in detail; and it will be sufficient to state in general terms that they show that, having entered the service as a private soldier, and while but a youth, in May, 1861, he rose rapidly from the ranks by his zeal and efficiency in the performance of his duties, and occupied throughout and to the close of the war responsible official positions in the Army, acquitting himself everywhere—in battle, on the march, and in camp—with distinguished honor and to the entire satisfaction of his superior officers. In February, 1866, Major-General Thomas wrote to the Secretary of War, asking for the appointment of this officer to a lieutenancy in the Regular Army, saying:

Lieutenant Spencer performed his duties faithfully and well, and to the satisfaction of those with whom he was serving. He is industrious and intelligent, and has on all occasions manifested a cheerful and ready spirit to do whatever was required of him.

In this letter and recommendation Lieut. Gen. W. T. Sherman concurred. In April, 1867, a communication was addressed to Lieutenant-General Sherman in behalf of this officer, in which, after reciting at length his faithful services during the war, it said:

In view of his long-continued faithful and efficient services, and for the acts of heroism mentioned in the accompanying recommendations for brevet promotion, we, the undersigned, petition your earnest recommendation to his appointment to a brevet lieutenant-colonelcy.

This communication was indorsed, "approved and recommended," by General Sherman. In May, 1867, this officer was recommended to the Secretary of War by General Grant "for brevet captaincy for gallant and meritorious services at battle of Atlanta, to date March 2, 1867." In the presence of such testimonials, and of those of more recent date, no doubt can be entertained but that the long military career of this officer has been marked by zeal, fidelity, courage, honor, and efficiency.

The offense for which he was convicted and dismissed was committed under peculiar and exceptional circumstances, and although it exposed him to the penalty he is suffering, it did not compromise his integrity or the high soldierly qualities he has heretofore so constantly displayed. Believing that in a matter affecting his honor and that of his family, his superior officer had failed to do his duty, he addressed him the insulting and insubordinate letter for which he was tried. The act was done in a frenzy of passion and under a stinging sense of the wrong he supposed he had suffered. With the cooling of the momentarily ungovernable excitement under which he had acted, he bitterly repented of what he had done, sought the following day to withdraw the letter, and thus endeavored to make such amends as he could. Of his continued sor-

row for his offense there can be no question. The best interests of the military administration, however, required that he should be tried, and that a signal condemnation should be visited upon his insubordinate conduct. This has been done. The dignity and discipline of the service have been vindicated, and in the humiliation of his trial and dismissal, a punishment has been inflicted upon him, which, for one of his sensibilities, must be most poignant and enduring in its effects. It is believed that this punishment may be safely accepted as a sufficient atonement. Such a record as he has made in the country's service, to which the prime of his life has been devoted, should not, it is thought, be allowed to be permanently sullied by a single offense, sincerely repented of and marked by such circumstances of mitigation as are disclosed in the explanation subsequently made. The President, in his recent consideration of the case, evidently arrived at the conclusion that the sentence might well have been commuted. In his indorsement on the petition, he says:

I had much doubt about the propriety of approving the sentence in the case of Lieutenant Spencer at the time it was submitted, and now think it was a mistake in its severity. The case may be reinvestigated, and if found to be so, sentence may be suspended.

The sentence having been executed relief can be had only by a reappointment.

J. HOLT,
Judge-Advocate-General.

(S. and friends never saw the above until furnished it by Secretary McCrary on application.)

Reappointment was unanimously recommended by Congress by act approved March 3, 1877.

2.

Indorsements on application of First Lieut. Thomas J. Spencer, Tenth Cavalry, dated April 25, 1871, for a transfer with First Lieut. E. H. Townsend, Thirteenth Infantry.

[First indorsement.]

CAMP MOUTH OF CACHE CREEK, INDIAN TERRITORY,
April 25, 1871.

During his connection with this company, while I have been in command, Lieutenant Spencer has been zealous and efficient in the discharge of his duties, and as he urgently desires to transfer to the Thirteenth Infantry, this application is respectfully forwarded, approved.

THOMAS LITTLE,
Captain Tenth Cavalry, commanding Company L.

3.

[Second indorsement.]

HEADQUARTERS DETACHMENT TENTH CAVALRY,
CAMP ON RED RIVER, INDIAN TERRITORY,
April 26, 1871.

Respectfully forwarded, approved. I fully concur with Captain Little as far as Lieutenant Spencer's discharge of duty is concerned, during the time he has been under my command.

D. B. McKIBBIN,
Major Tenth Cavalry, Commanding.

3.

[Third indorsement.]

HEADQUARTERS TENTH CAVALRY,
FORT SILL, INDIAN TERRITORY,
May 3, 1871.

Respectfully returned (through commanding officer detachment Tenth Cavalry) to Lieutenant Spencer, who will state more explicitly his reasons for desiring transfer, or inclose copies of communications herein referred to, for the information of the regimental commander.

By order of Col. B. H. Grierson.

L. S. WOODWARD,
First Lieutenant Tenth Cavalry, Adjutant.

4.

[Fourth indorsement.]

HEADQUARTERS DETACHMENT TENTH CAVALRY,
CAMP ON RED RIVER, INDIAN TERRITORY,
May 10, 1871.

Respectfully returned to Lieutenant Spencer, Tenth Cavalry, whose attention is called to indorsement of regimental adjutant.

D. B. MCKIBBIN,
Major Tenth Cavalry, Commanding.

5.

[Fifth indorsement.]

IN THE FIELD, COMPANY L, TENTH CAVALRY,
Camp Mouth of Cache Creek, I. T., May 10, 1871.

Respectfully forwarded. In compliance with indorsement from headquarters Tenth Cavalry, I have to state that my principal reason for requesting an exchange is my belief that my colonel is unduly prejudiced against me, having preferred charges against me, of which I was acquitted, and having written letters to department headquarters, which resulted in bringing me before the board for the examination of officers to be thrown out of service under charges, which were refuted. Par. IV, General Orders No. 2 (c. s.), Adjutant General's Office, Headquarters Army, provides that officers may be transferred on mutual application.

THOS. J. SPENCER,
First Lieutenant Tenth Cavalry.

6.

[Sixth indorsement.]

HEADQUARTERS DETACHMENT TENTH CAVALRY,
Camp on Red River, Ind. T., May 10, 1871.

Respectfully forwarded to Headquarters Tenth Cavalry, Fort Sill, Ind. T.

D. B. MCKIBBIN,
Major Tenth Cavalry, Commanding.

7.

[Seventh indorsement.]

HEADQUARTERS TENTH CAVALRY,
Fort Sill, Ind. T., May 13, 1871.

Respectfully forwarded. I earnestly request that this application be granted. Lieutenant Spencer has utterly failed to command the respect of either the officers or men of this regiment, and is entirely unfit for a cavalry officer. The charges I preferred against him were for "absence without leave," and were ordered to be preferred by the Adjutant-General United States Army.

The other charges, from which he escaped upon a technicality, were preferred by a field-officer of the regiment. How he managed to pass the board, with the evidence against him for inefficiency, is a mystery.

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding Regiment.

8.

Before the "Hancock Board" (1870), Major Kidd (the field-officer referred to by Colonel Grierson) testified that he preferred the charges in question because Colonel Grierson ordered him so to do. Furthermore, it will be seen that I was reported by Colonel Grierson as "absent without leave," and because of that report the Adjutant-General United States Army ordered the charges to that effect to be made against me. (See paper marked 16.)

THOS. J. SPENCER,
Brevet Captain, United States Army.

9.

CHAMBERSBURG, PA., *October* 6, 1875.

SIR: I have the honor to state that I have known Capt. T. J. Spencer, late Tenth United States Cavalry, since my assignment to the Tenth Cavalry in 1871, and have at different times been his commanding officer. His duties as a soldier were always promptly and efficiently attended to, and at one time, near the mouth of Cache Creek, Indian Territory, he crossed Red River into Texas for the protection of a ranch, not far from his command, with but ten men, when the Indians were reported there in very large numbers. From my knowledge of this officer, I should think that it must have been a temporary insanity which caused him to write the letter which caused his dismission.

* * * * * * *

D. B. McKIBBIN,
Major United States Army, Brevet Brigadier-General.
ADJUTANT-GENERAL
United States Army.

10.

[Indorsements on application of First Lieutenant Thomas J. Spencer, Tenth Cavalry, dated September 16, 1872, for six months' leave of absence, with permission to ask for six months' extension, and to go beyond sea.]

FORT SILL, IND. T., *September* 16, 1872.

Respectfully forwarded approved, and request that the within application be granted, as I can dispense with this officer's services, having

another with my company to assist in performing its duties, and, in my opinion, Lieutenant Spencer is entitled to this indulgence.

THOMAS LITTLE,
Captain Tenth Cavalry, Commanding Company L.

11.

[Second indorsement.]

HEADQUARTERS FORT SILL, IND. T.,
September 19, 1872

Respectfully forwarded with the recommendation that this application be favorably considered. Lieutenant Spencer is entitled to the indulgence, and his services can be dispensed with for the time without detriment to the service.

G. W. SCHOFIELD,
Major Tenth Cavalry, Commanding.

* * * * * * *

12.

CINCINNATI, OHIO, *June* 24, 1876.

Mr. THOMAS J. SPENCER:

I witnessed your general conduct as an officer of the Army, a portion of the time from 1868 to 1872, while I was serving in the Indian Territory and you were stationed at Forts Gibson, Arbuckle, and Sill, and I can freely say that I thought it very satisfactory, and I never knew any objections to it either upon the score of military duty or conduct as a man of integrity and correct habits, and this was quite in accord with your character as I knew it in the war.

I am, respectfully,

W. B. HAZEN,
Colonel Sixth Infantry, Brevet Major-General.

I desire further to say that, from considerable observation upon the subject, I have been strongly impressed with the opinion that General Grierson's estimate of men is more often faulty than any person's of his experience and rank I have ever known in the Army.

W. B. HAZEN.

13.

FORT SILL, IND. T., *November* 21, 1870.

The undersigned, officers of the Tenth Cavalry, having learned that First Lieutenant Thomas J. Spencer, Tenth Cavalry, has been ordered to appear before the board now in session at Washington, D. C., of which Major-General Hancock, United States Army, is president, upon certain allegations made against him, desire to state that during our acquaintance and connection with him we have found him to be a gentlemanly officer, and know of nothing against his character either as an officer or a gentleman which can be substantiated. Believing that Lieutenant Spencer can satisfactorily answer any charges made against

him, we trust and hope that he will be able to vindicate himself in every respect.

E. BYRNE,
Captain Tenth Cavalry.
L. H. CARPENTER,
Captain Tenth Cavalry.
JNO. D. MYRICK,
First Lieutenant Tenth Cavalry.
L. H. ORLEMAN,
Lieutenant Tenth Cavalry.
GEO. T. ROBINSON,
Captain Tenth Cavalry.
ROBT. GRAY,
Captain Tenth Cavalry.
THOS. C. LEBEAU,
First Lieutenant Tenth Cavalry.
WM. E. DOYLE,
Second Lieutenant Tenth Cavalry.
R. H. PRATT,
First Lieutenant Tenth Cavalry.
J. T. MORRISON,
First Lieutenant Tenth Cavalry.
J. W. WALSH,
Captain Tenth Cavalry.
J. WILL MYERS,
Second Lieutenant Tenth Cavalry.
JOHN B. VANDE WEILE,
Captain Tenth Cavalry.
R. N. PRICE,
Second Lieutenant Tenth Cavalry.
ORVILLE BURKE,
Captain Tenth Cavalry.
J. E. YARD,
Major Tenth Cavalry.
M. J. AMICK,
First Lieutenant Tenth Cavalry.
C. E. NORDSTROM,
First Lieutenant Tenth Cavalry.
CHAS. BAUZHAF,
First Lieutenant Tenth Cavalry.
W. R. HARMON,
Second Lieutenant Tenth Cavalry.

14.

HEADQUARTERS POST OF LITTLE ROCK, ARKANSAS,
December 14, 1870.

I have known First Lieut. Thomas J. Spencer, Tenth United States Cavalry, since June, 1868. He served under my command from June 2, 1868, until about the 1st December of the same year. I always found him prompt and efficient in the discharge of his duties, and his conduct and deportment were uniformly those of a gentleman.

JAMES P. ROY,
Major Sixth Infantry.

Subscribed and sworn to before me this 14th December, A. D. 1870.
FRANK O. WRIGHT,
Clerk United States Circuit Court Eastern District Arkansas.

15.

WASHINGTON, D. C., *February* 23, 1877.

MY DEAR SPENCER: I have known you since the winter of 1867, when we were both snow-bound on the plains between Fort Hays and Fort Harker, and I wish to say that I have known how hard you have been struggling for the last ten months to vindicate yourself by obtaining restoration to the Army, and I desire to express my earnest hope that you will succeed. I have heard that Colonel Grierson has remonstrated in your case, but I feel sure he cannot support by proofs anything that will compromise your character as an officer and a gentleman.

I know that he is generally regarded as your bitter personal enemy, and that he gave you a great deal of distress and trouble by his vindictiveness while we were together at Fort Sill, but I am glad to say, for your sake, and your estimable wife and little girl, and all your host of friends, that you came through every storm with colors flying.

I have spent thirty odd years in garrisons and with officers, and am familiar with military life, and have children married to Army officers, and I can unhesitatingly say I never knew of an officer so persistingly and vindictively pursuing and persecuting another like Colonel Grierson pursues and persecutes you. I hope you will be restored, and your heart be made glad notwithstanding.

Very respectfully,

A. G. BOONE,
Late Sioux Commissioner.

Evidence given before the board of which Maj. Gen. W. S. Hancock, United States Army, was president, December, 1870, in the case of Lieut. Thomas J. Spencer, Tenth Cavalry.

16.

Evidence of Maj. Meredith H. Kidd, Tenth Cavalry.

[Extract.]

* * * * * * *

I served with Lieutenant Spencer; he was under my command from early in the winter of 1869 until, I think, in the latter part of May of that year. After that I served at the same post with him until the first of the September following. I know nothing derogatory to his character as a gentleman except it would be from hearsay, and I, of course, do not know that. I heard of a court-martial, but I know nothing of the facts except there was a talk. Indeed, I signed the charges at the request of Colonel Grierson without knowing what the charges were. He had them framed and sent to me with his compliments, and requested that I should sign them, which I did to make them formal.

17.

Capt. James W. Powell, a witness called by Lieutenant Spencer, having been first duly sworn by the recorder, testified as follows:

Lieutenant Spencer has been stationed at the same post that I have been at for about a year, and during that time he always seemed to be very efficient in the performance of his duties. His quarters were so

located that in going to his company he always passed my quarters, and I have often noticed his appearing to be very prompt in attending stable-calls and roll-calls. I have never known anything regarding him unbecoming an officer or gentleman.

Question. Do you know anything in relation to his social relations with Colonel Grierson?

Answer. Nothing that I have heard General Grierson himself state. It was merely some common rumors about the post regarding the matter. I cannot even say who told that, or what officer spoke of it particularly.

Q. What is your opinion as to the efficiency of Lieutenant Spencer as an officer?—A. I believe him to be an efficient officer. * * * Lieutenant Spencer has been on duty with me as an officer of the guard, during my tour as officer of the day, and I always felt he was performing his duties well. I observed that he did so during such occasions. That is the only association on duty that I can recollect now.

18.

Captain L. C. Forsyth, assistant quartermaster, was called as a witness by Lieutenant Spencer, and, having been first duly sworn by the recorder, testified as follows:

Questions by Lieutenant Spencer.

Q. State fully what you know of Lieutenant Spencer, as to his character as an officer and gentleman?—A. I have been on duty with Lieutenant Spencer some eighteen months. I know nothing derogatory to his character as a gentleman or an officer.

Q. Do you know anything in regard to his social relations with Colonel Grierson?—A. Yes, sir. I believe they are not on very good terms, but I know nothing further about it.

Q. What is your opinion as to the efficiency of Lieutenant Spencer as an officer?—A. I believe he is a very efficient officer.

Q. Give your reasons for this opinion.—A. I should judge so from what I have seen in connection with his duties at the post. I have seen him on duty there in connection with his command; and such business as we have had to transact with each other has always been done in an officer-like and efficient manner.

Questions by the Board.

Q. Do you know the cause of the unfriendly feeling between Colonel Grierson and Lieutenant Spencer?—A. I cannot tell.

Q. Did it rise out of any matters of duty?—A. I could not say, for I really do not know. I know there has been a feeling of animosity for a long time. It existed some time before I joined the command, but I do not know the foundation of it. It seemed to be a strong personal feeling, though.

19.

Extract from testimony of Capt. Montgomery Bryant, Sixth Infantry, *now* Major Fourteenth Infantry.

* * * * * * *

Q. What did you know in reference to my personal relations to my regimental commander?—A. I know they are not good.

Q. Please state particularly what you know on the subject?—A. I do not remember whether I have heard his regimental commander say anything in regard to him, but from the general report I know that it was

the endeavor of General Grierson to get Lieutenant Spencer out of the service by any means he could make use of.

Questions by the Board.

Q. State how you know.—A. Only by report. I was stationed with General Grierson with the Tenth Calvary, and that was the general report among officers there. I am not certain whether I heard any remark of General Grierson, but it is my impression that I may have heard him say that it was his determination to get him out of the service.

Q. Did you say that you may have heard it, or did hear it?—A. It is my impression that I did hear it.

20.

Before the same board, Captain Rife, Sixth Infantry, testified, "I have heard General Grierson express unkind and ungentlemanly remarks about Captain Spencer, * * * * * of a personal nature, that did not reflect on his official character," and General Hazen wrote, "My attention was frequently drawn to your conduct on the battle-field, where, during the engagement, you always kept the troops fully supplied with ammunition, and afterwards performed thoroughly your duty in gathering up the property left there."

Colonel Baylor, of the Ordnance Corps, wrote, "Lieutenant Spencer served with me from 1863 to the close of the war. During this time his habits were unexceptionable, and he discharged his various duties with zeal and ability." * * * *

In addition to the foregoing, there are in my possession, and also among the War Department files, a large number of letters certifying in my behalf while I was a student, prior to the war of the rebellion and covering the period of my civilian life, since April 24, 1874, in editorial and newspaper and mercantile reportorial capacities; but those above presented are believed sufficient for the object for which they are respectfully submitted. Ample answer to, and explanation or refutation of each and every specific allegation ever made against me, has also, as the same were presented, been submitted to the proper authority.—(Copies in War Department.)

T. J. S., *U. S. A.*

* * * * * * *

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 53.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of March 22, 1878, information in relation to the improvement of the Cape Fear Harbor, North Carolina, since the last report thereon.

APRIL 4, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 3, 1878.

The Secretary of War has the honor to transmit to the United States Senate a letter of the Chief of Engineers, and a copy of a report from Capt. Charles B. Phillips, Corps of Engineers, upon the improvement of the Cape Fear Harbor, in North Carolina, since the last report thereupon, in compliance with Senate resolution of March 22, 1878, calling for the information.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., April 1, 1878.

SIR: I beg leave to return herewith the resolution of the Senate of the United States of the 22d March, directing the Secretary of War "to transmit to the Senate any information he may have in his department in relation to the improvement of the Cape Fear Harbor, in North Carolina, since the last report upon that improvement," and in compliance with its requirement to submit the inclosed report from Capt. Charles B. Phillips, Corps of Engineers, which will afford full information respecting the improvement in question.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigaider-General and Chief of Engineers.

Hon. GEO. W. McCRARY,
Secretary of War.

IMPROVEMENT OF THE MOUTH OF CAPE FEAR RIVER, NORTH CAROLINA

UNITED STATES ENGINEER OFFICE,
Baltimore, March 27, 1878.

GENERAL: I have the honor to acknowledge the receipt of your com-

munication of the 26th instant (addressed to Major Craighill), transmitting, for information and for report thereon, a copy of a resolution of the United States Senate, dated 22d instant, calling upon the Secretary of War for—

> Any information he may have in his department in relation to the improvement of the Cape Fear Harbor in North Carolina, since the last report upon that improvement.

As Major Craighill's successor (temporarily), it devolves upon me to report as follows:

At the date of the last annual report of the Chief of Engineers, operations were being principally confined to filling in with stone upon the structure for closing the space between Federal Point and Zeke's Island, and known as the "New Inlet."

About 20,000 cubic yards of stone had then been delivered upon the work under the then existing contract. The contract time for this delivery expired on the 31st of December, 1877. The contractors at that time had, by pushing their work vigorously, delivered very nearly 50,000 cubic yards of stone in all, which amount was somewhat more than was required of them.

At this time (December 31 last) a balance of about $20,000 remained on hand, available for the continued delivery of stone.

Previous to this time it had become manifest that it was particularly desirable that there should be no suspension in the delivery of stone, as will be explained hereafter in this report, and bids were invited for continuing the work to the extent of available funds.

These bids were opened November 15, 1877, and a contract was executed for the delivery of 12,000 yards of stone for the sum specified above, or at the rate of $\$1.66\frac{2}{3}$ per yard.

Work under this contract was commenced early in January last, and at the present date nearly 10,000 yards have already been delivered. It is expected that the contract will be entirely fulfilled on the 10th proximo, when all further work for the closure of the New Inlet must necessarily be suspended for want of funds.

In the last annual report it is stated:

> The closing work is as high as low water for about two-fifths of its length, * * * but the full width has not yet been given it.

The 40,000 cubic yards of stone which have since been put on the work have brought the structure up to low-water mark over nearly its entire length, but it must still be said the "full width has not yet been given it."

The structure at low-water mark is not over about six feet in width, with ridges at points projecting above this level. The filling which had been done just before the date of the last annual report, and which constituted the two-fifths of the length referred to in the report, was mostly in deep water, varying from 10 to 18 feet in depth. The filling in this deep water was standing well; but very little, if any, settling has been observed, which was very encouraging at the time (1st of July last); and it may be remarked here that this deep filling has continued to stand with but little settling.

But when the shoaler water was reached, particularly on the second section of the work (1,588 feet in length), a very serious settling was almost immediately detected as the filling advanced. It has been quite fully explained in previous reports that the first step for the closure of the inlet consisted in putting an apron, composed of mattresses of round timber and brush, loaded with stone, entirely across the space in question. This apron varied in width from 45 to 70 feet, according to the

depth of water at any particular point. The width of the apron on the second section was uniformly 45 feet, and its line of direction was on what was known as the "six-feet shoal."

As the filling has continued over the entire work generally, but more noticeably over the shoaler portions, of which the second section is an example, the water has cut out a deep trench on each side of the work, and this seems to have been caused more by the pouring of the water *over* the structure than by any current along the sides. As a result of this, the entire work is left resting upon a ridge and at the shoaler places the work has gradually settled as the water has found its way between the timbers forming the base of the structure.

The limit of scour seems to have been attained at the present time, and the depth to which it has reached is about eighteen or twenty feet below ordinary low water. This depth, however, is found only at quite a distance from the mattresses, and no settling has been observed at points where the mattresses were placed at a depth of 14 feet or more below ordinary low water. As the entire base of the structure is, at the shoalest point, about 12 feet below low water at the present time, there is reason to suppose that the settling has nearly ceased, especially if the theory be correct that the limit of scour, due to the overfall of water, has been attained. It will be seen at a glance from the above that the settling (unexpected in extent) has caused the original estimates for the quantity of stone required to complete the work to fall below the amount absolutely required. On the completion of the apron, it was estimated that 85,000 cubic yards of stone would be required to bring the closing work to high-water mark. This was in June, 1876. Since that date about 62,000 yards have been put in, leaving a balance of 23,000 yards yet due to fill the estimate. It is now estimated that nearly 80,000 cubic yards of stone will yet be required to complete the work to high water.

It is no more than just and proper to add, however, that this discrepancy would not have been so large had it been possible to have prosecuted the work continuously.

I quote from a report made on the 11th of the present month, by Mr. Henry Bacon, the assistant in immediate charge of this work. He says:

> As the work of stone filling at the New Inlet dam has proceeded, the scouring on each side and adjacent to it has increased, and all those portions of the work which were placed in shoal water, embracing nearly all the second section (1,588 feet in length) and portions of the first and third sections, have been gradually settled by the water finding its way between and under the logs of the mattresses, so that the base of the work is nearly everywhere at least 12 feet below mean low water.
>
> This subsidence and scouring are undoubtedly favorable for security and permanence, but necessarily involve a larger expenditure of riprap than was expected. Experience has shown the necessity of giving a liberal top-width to the dam at high water, and of large stone carefully placed on the top and sea-side surface of the dam.
>
> In completing the work to high-water mark, the slopes must be filled with stone to the limit of the scouring in depth. This already seems to have reached its limit. No increase has occurred for several months.
>
> The forces to be contended with in the closure of the New Inlet are well illustrated by the fact that in the present imperfect state of the dam the water on the river-side, toward the last of the ebb tide, is sometimes two feet higher than on the sea-side.
>
> When the water shall be completely shut off by the dam, the difference will at certain times probably amount to 3 feet.
>
> In the light of all our experience, I would now estimate the amount of stone required to complete the dam to high-water mark at 80,000 cubic yards.
>
> The good effect of the partial closure of the New Inlet is already apparent at the mouth of the river by the general increase of depth both at the "Rip" and the Bald-Head channels.
>
> No words are needed to show the propriety and necessity of granting the comparatively small amounts needed for the completion of this important work.

I concur with Mr. Bacon in all that I have quoted above. His estimate of amount of stone required to complete the closing work to high-water mark appears high, and I trust that it may prove higher than necessary; but he is daily at the point of operations, and has been during the past two years and more, and he has learned that due allowance should be made for the treacherous movements of the tides and sand on this particularly exposed shore.

Three important steps for the improvement of the Lower Cape Fear River, at and below New Inlet, have constantly been kept in mind by the officer who has been in charge of the work for the past seven years (and who is now but temporarily relieved from the charge of same), viz, the closing of New Inlet; the deepening of water on the bar at the old mouth of the river, and the restoration of the old channel behind the "Horseshoe," opposite the inlet, and known as the Snow's Marsh channel.

Of these operations, the first and the third are mainly merely subsidiary to the accomplishment of the improvement of the bar.

From time to time, work to a limited extent has been attempted, both at the bar to assist nature in restoring the old depth of water, and at the "Horseshoe" to restore the old location of the channel. The restricted means at the disposal of the officer in charge of the work have caused those attempts to be but comparatively feeble; but the results have demonstrated beyond a doubt the correctness of the theory which prompted them. For the past two years the small amount of funds available, and the particularly exposed position of the New Inlet, have imperatively dictated the necessity of devoting every available dollar to the work at the inlet, in order to secure that which had already been attained at so great an expense.

While I am called upon merely to give information in relation to the improvement of the Cape Fear River, and am not specially invited to express any "opinion" on the subject, I will venture to say the following, and trust that I will not be considered presumptuous in so doing: The officer in charge of the work, in his annual report in July last, stated: "Amount that can be profitably expended in fiscal year ending June 30, 1879, $160,000."

This amount at that time was considered absolutely necessary to make complete the work at the inlet, with the probability that a sufficient balance would remain to enable some steps to be taken for the accomplishment of the subsidiary operations referred to above.

Circumstances which have arisen since the date of said report have certainly not diminished the amount which can be used to advantage during the year in question.

On the contrary, the unlooked-for increase in the amount of stone required at the closing work at the inlet has proportionally increased the amount which can be used to advantage; and I greatly fear that the amount in question, if appropriated, will do no more than close the inlet, and secure properly the beach in its vicinity, while the minor operations remain neglected—operations which should go on at once, in order to secure promptly to navigation the full fruits resulting from the main operation, viz, the closure of New Inlet.

I am, general, very respectfully, your obedient servant,

CHARLES B. PHILLIPS,
Captain of Engineers.

Brig. Gen. A. A. HUMPHREYS.
Chief of Engineers, U. S. A.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 54.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A petition of certain officers of the Fifth Infantry, United States Army, praying to be reimbursed for losses sustained by the sinking of the government steamer Don Cameron.

APRIL 4, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 3, 1878.

The Secretary of War has the honor to transmit to the United States Senate petition of certain officers of the Fifth Infantry, praying reimbursement for losses sustained by the sinking of the government steamer Don Cameron; also lists of articles lost.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned, officers of the Fifth Infantry, United States Army, respectfully submit, that having changed station from Fort Leavenworth, Kansas, in the Department of the Missouri, to cantonment mouth of Tongue River, Montana Territory, in the Department of Dakota, pursuant to orders of the commanding general's division and Department of the Missouri, and having caused their personal baggage and private effects to be loaded for transportation to this station on the government steamer J. D. Cameron, at Fort Leavenworth, said steamer being the means of transportation furnished by the Quartermaster's Department of the Army, said baggage and effects were, on or about the 18th day of May, 1877, lost or destroyed by the sinking of the steamer J. D. Cameron in the Missouri River, forty miles below Sioux City, Iowa.

The undersigned further submit that the baggage shipped by them was duly authorized by the Quartermaster-General, in compliance with General Orders No. 90, War Department, Adjutant-General's Office, November 1, 1875, and invite attention to appended copy of such authorization, marked "A."

For the reasons herein set forth the undersigned respectfully request

reimbursement to the amounts lost by them severally, as set forth in their accompanying schedules and certificates.

NELSON A. MILES,
Colonel Fifth Infantry.
D. H. BROTHERTON,
Captain Fifth Infantry.
CHAS. B. THOMPSON,
Second Lieutenant Fifth Infantry.
GEO. GIBSON,
Major Fifth Infantry.
SIMON SNYDER,
Captain Fifth Infantry.
MASON CARTER,
First Lieutenant Fifth Infantry.
T. F. FORBES,
First Lieutenant Fifth Infantry.
F. H. HATHAWAY,
Second Lieutenant and R. Q. M. Fifth Infantry.
J. W. POPE,
Second Lieutenant Fifth Infantry.
E. P. EWERS,
Captain Fifth U. S. Infantry.
G. W. BAIRD,
First Lieutenant and Adjutant Fifth U. S. Infantry.
THOS. M. WOODRUFF,
Second Lieutenant Fifth Infantry.
T. H. LOGAN,
First Lieutenant Fifth Infantry.
A. S. BENNETT,
Captain Fifth U. S. Infantry.
OSCAR F. LONG,
Second Lieutenant Fifth U. S. Infantry.
HENRY ROMEYN,
First Lieutenant Fifth Infantry.
D. Q. ROUSSEAU,
Second Lieutenant Fifth Infantry.
JAMES S. CASEY,
Captain Fifth Infantry.
FRANK D. BALDWIN,
First Lieutenant Fifth Infantry.
C. E. HARGOUS,
Second Lieutenant Fifth Infantry.

A.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, March 3, 1877.

COLONEL: Referring to letter from this office to you of the 13th ultimo, in relation to the building of boats for service on the Yellowstone and Bighorn Rivers, you are respectfully informed that the Secretary of War directs that the transportation of the company baggage, laundresses, enlisted men, officers' families, and property of the Fifth Infantry, now at Fort Leavenworth, be done by the boats (now building at Jeffersonville) to go up the Missouri River.

The regimental quartermaster of the Fifth Infantry reports that transportation will be required for officers' families, some twenty persons in number, twenty soldiers, and that children of soldiers will swell the list to about two hundred persons, while the property to be shipped is estimated at one hundred and fifty tons. Please give orders to the boats accordingly.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General.

Lieut. Col. JAMES A. EKIN,
Deputy Quartermaster-General, U. S. A.,
Jeffersonville, Ind.

Official:

G. W. BAIRD,
First Lieutenant and Adjutant, Fifth Infantry.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., April 18, 1877.

COLONEL: Your letter of the 16th ultimo, requesting that the allowance of transportation for baggage be increased, and that a boat be chartered to carry the baggage of the Fifth Infantry, and the families of officers and enlisted men, to the station of the regiment on Tongue River, has been received.

You are respectfully informed that in compliance with instructions to Lieut. Col. J. A. Ekin, depot quartermaster, Jeffersonville, Ind., dated March 3, 1877 (copy inclosed), two boats will call at Leavenworth between the 25th and the 30th of this month for such persons and such supplies as may be ready to go up the river. They will probably be able to carry all the officers desired.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. A.

Col. NELSON A. MILES,
Fifth Infantry, Commanding Cantonment
on Tongue River, Montana Territory.

Official:

G. W. BAIRD,
First Lieutenant and Adjutant, Fifth Infantry.

FORT KEOGH, MONTANA,
January 5, 1878.

I certify that my losses in household goods, personal effects, &c., sunk on the United States steam transport J. D. Cameron, in the Missouri River, below Sioux City, Iowa, May 18, 1877, amount to the sum of three thousand two hundred and five dollars and forty-nine cents ($3,205.49).

NELSON A. MILES,
Colonel Fifth Infantry.

FORT KEOGH, MONTANA,
January 6, 1878.

I certify on honor that all of my household property, consisting of furniture, various kinds, carpets, bedding, house linen, glass and china ware, table-ware, &c., amounting, at a low estimate, to $1,350, was lost by the sinking of the United States steamer J. D. Cameron in the Missouri last spring, said property having been placed on said vessel by Lieutenant Hathaway, regimental quartermaster, for transportation to this post.

The property lost is necessarily miscellaneous in its character, much of it being the collections of some years past; while a good deal of it was newly purchased last spring, and for which I had the pleasure of paying, without ever being permitted to see it.

All of which is respectfully submitted.

GEO. GIBSON,
Major Fifth Infantry.

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1 marble-top washstand	$12 00
1 pine-top washstand	1 50
Tapestry Brussels carpet, 25 yards, at $1.50	18 75
Tapestry Brussels carpet, at 60 cents	8 00
Ingrain carpet	16 25
3 rugs, velvet	19 50
7 pieces plaster Paris statuettes	7 00
2 globes	1 00
1 lambrequin, rep	15 00
1 lounge	23 00
1 kitchen clock	3 00
1 mattress, moss	12 00
1 mirror	4 50
6 camp-chairs	12 00
8 chairs, dining	12 00
1 bureau, pine	2 50
1 bedstead, oak	4 00
1 walnut center-table	12 00
1 dressing-case mirror	8 50
1 large cane-bottom chair	5 00
1 dressing-case bureau, marble-top	15 00
1 bedstead, walnut	15 00
1 bolster, 3 pillows	6 60
1 desk, walnut	15 00
1 mess chest, table furniture and linen, and kitchen furniture	250 00
1 mattress, bed-clothing, and house linen	100 00
6 chairs, parlor	65 00
6 chromos	45 00
4 engravings, steel plate	20 00
1 large cornice	10 00
1 small cornice	5 00
1 parlor chandelier	18 00
1 hall lamp and shade	7 50
1 table lamp	5 00
1 student's lamp	7 50
1 small stand, walnut	5 00
1 large stand, walnut	7 00
Books, military text-books, and miscellaneous	300 00
1 chest, citizen's and uniform clothing, lace curtains, wife's clothing, shawl, and miscellaneous	250 00
5 linen curtains	10 00
3 brackets, walnut	6 00
1 center-table slab, marble	5 00
2 marble slabs to dressing-case bureau	10 00
3 saddles and bridles and equipment for officer's saddle	60 00
	1,435 00

I certify on honor that the above is a correct list of articles of household goods and furniture, &c., shipped by me on the United States steamer J. Donald Cameron, at Fort Leavenworth, Kans., on the 10th day of May, 1877, and that said articles were lost and damaged by the sinking of said boat in the Missouri River, below Sioux City, on the 18th day of May, 1877, and that the value of said articles lost and damaged is truly set forth above, the total loss amounting to the sum $1,435.

D. H. BROTHERTON,
Captain Fifth Infantry, U. S. A.

FORT KEOGH, MONTANA,
January 4, 1878.

I certify in honor that the loss in household and personal effects sustained by me through the sinking of the government steamer J. Donald Cameron, in the Missouri River, on the 18th day of May, 1877, amounts to the sum of two thousand three hundred and seventy dollars and fifty cents ($2,370.50).

SIMON SNYDER,
Captain Fifth Infantry.

WASHINGTON, D. C., *February* 21, 1878.

GENERAL: I have the honor to transmit herewith an itemized list of my personal property that was lost on the sinking of the steamer Don Cameron, on her trip up the Missouri River, last May, and respectfully request that the itemized list replace the certificates that were forwarded from Tongue River, Montana Territory. When I forwarded the certificates, I was under the impression that it would be impossible for me to furnish a list of articles; but on my arrival home, I was furnished with information which enabled me to itemize.

I have made up the list as carefully as possible under the circumstances.

I have the honor to remain, general, very respectfully, your obedient servant,

A. S. BENNETT,
Captain Fifth Infantry.

To the ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.

Post-office address:
Care of Enoch Totten, Esq., Washington, D. C.

List of personal property lost by Capt. A. S. Bennett, Fifth United States Infantry, by the sinking of the steamer Don Cameron on the Missouri River, May, 1877.

1875.		
Aug. 14.	1 folding chair	$7 00
	1 velvet rug	8 00
	2 velvet rugs	4 50
	72½ yards carpet, $1.25	90 65
	11 yards stair-carpet, 75 cents	8 25
Sept. 7.	1 blue rug	8 50
	1 walnut bedstead	7 00
	1 tea-tray	2 25
	1 whatnot	7 50
	34½ yards carpet, $1	34 50
	7½ yards carpet, 50 cents	3 75
22.	4⅜ yards blue shade, 45 cents	2 10
	2 7-feet lavender, $1	2 00
	4 tassels, 25 cents	1 00
23.	1 C. E. bed	3 00

1875.		
Sept. 23.	1 mattress	$3 00
	1 comfort	2 50
	1 moss pillow	90
28.	31½ yards carpet paper, 7 cents	2 35
29.	2 English cot-chairs	4 00
30.	1 towel-rack	1 50
Nov. 2.	1 How springs	5 00
Dec. 21.	1 mattress	3 50
	1 comfort	3 00
Aug. 19.	2 shades, $2	4 00
	1 oil-cloth rug and binding	2 25
	2 chairs, $10	20 00
	2 chairs, $3.50	7 00
	2 chairs, $2	4 00
	1 escritoire	35 00
	1 extension table	9 00
	1 small table	2 50
	1 bureau	14 00
	1 chest	8 00
	1 trunk	8 00
	1 hair mattress	36 00
	2 student lamps, $7	14 00
	3 lamps	4 50
	1 hammock	5 50
	1 suit citizen's clothes	30 00
	1 dozen white shirts	36 00
	3 silk undershirts	13 00
	3 coat patterns (unmade)	38 00
	1 uniform cap	5 50
	1 uniform pants	14 00
	1 uniform coat	25 00
	1 uniform blouse	15 00
	1 uniform hat	8 00
	1 uniform shoulder-knots	18 00
	1 uniform belt	15 00
	1 uniform sword-scabbard	4 50
	Gloves	9 00
	Towels	5 50
	Collars	3 00
	Hose	4 50
	Letter-weight and inkstand	7 50
	Table-linen	23 00
	Bedding	12 00
	Crockery	25 00
	Cutlery	15 00
	Silverware	36 00
	1 churn	2 00
	1 ice-cream freezer	5 00
	Rubber boots	4 50
	Gun and equipments	140 00
	Saddle and bridle	15 00
	Books, &c	40 00
	1 buffalo robe	10 00
	Ornaments and various articles	20 00
	Blankets	7 50
	Tinware	8 00
		1,004 00

I hereby certify that, to the best of my knowledge and belief, the foregoing list of personal property is correct, and the amount set opposite each article is a fair valuation.

A. S. BENNETT,
Captain Fifth Infantry.

Subscribed and sworn to before me this 23d day of February, 1878.

R. J. MEIGS,
Clerk Supreme Court District of Columbia.
By M. O. CLANCY,
Assistant Clerk.

I certify that my loss by the sinking of the United States steamer Don Cameron in the Missouri River, on the 18th day of May, 1877, amounts to the sum of eight hundred dollars, consisting of personal property, clothing, furniture, linen, &c.

A. S. BENNETT,
Captain Fifth Infantry.

CANTONMENT TONGUE RIVER, MONTANA, *July* 27, 1877.

CANTONMENT AT TONGUE RIVER, MONTANA,
September 5, 1877.

I certify on honor that the loss of household effects and personal property sustained by me by the snagging and sinking of the government steamer Don Cameron, on the Missouri River, May 18, 1877, is estimated to be as follows, upon which there was no insurance, viz:

Furniture	$75 00
Bedding	40 00
Bed and table linen	45 00
Crockery	30 00
Books (military, &c.)	250 00
Pictures	50 00
Clothing (uniforms, &c.)	175 00
Carpets	45 00
	710 00

Respectfully submitted.

JAMES S. CASEY,
Captain Fifth U. S. Infantry.

I certify that the loss in household effects and personal property sustained by me through the sinking of the United States Government steamer J. D. Cameron, in the Missouri River, on the 18th day of May, 1877, amounted in money value to the sum of one thousand two hundred and five dollars and seventy cents ($1,205.70).

E. P. EWERS,
Captain Fifth Infantry.

FORT KEOGH, MONTANA, *January* 3, 1878.

Partial list of property lost by the sinking of the United States steamer J. D. Cameron.

40 yards of tapestry carpet	$52 00
1 velvet rug	7 00
1 drugget	13 50
2 mats	2 25
8 shades for windows	20 00
28 yards China matting	11 20
1 field-glass	15 00
Parlor furniture	84 00
Bed-room furniture	80 00
Dining-room furniture	21 00
Kitchen furniture	47 25
Hall furniture	4 00
Laundry fixtures	22 61
China and glass ware for table	113 28
Table-linen	40 50
Chamber set	13 00
Bed-linen, bedding, and toweling	165 00

Lace curtains and fixtures	$19 90
Lamps	23 65
Pictures and frames	67 75
6 oil paintings, approximate value	500 00
Clothing for self and family	260 00
Sewing-machine	90 00
Silverware	210 00
Cutleryware	27 00
Books	49 00
Iron safe	20 00
5 packing-chests	35 00
1 rifle	40 00
Wall-brackets and vases	20 00
1 toilet-table, 1 center-table, not included in parlor set	11 00 / 15 00
1 lambrequin	12 00
Fancy needle-work, cost of material alone	35 00
	2,155 89

I certify on honor that the above-enumerated personal property was lost by me by the sinking of the United States steamer J. D. Cameron.

FRANK D. BALDWIN,
First Lieutenant Fifth Infantry.

Statement of property belonging to First Lieut. Henry Romeyn, Fifth Infantry, lost on United States steamer J. D. Cameron, May 18, 1877, *en route from Fort Leavenworth, Kans., to mouth of Tongue River, Montana Territory, with value of same, or amount necessary to replace it.*

Household furniture:

One carpet, 28½ yards, at $1.65	$47 00
Six folding chairs, at $2.25	13 50
Four folding chairs, at $7	28 00
One rocker	7 00
Two children's chairs, at $2	4 00
One common bedstead	6 00
Mattress for common bedstead	9 00
Mattress, wire-spring	14 00
One feather bed	25 00
Six feather pillows	15 00
Three hair pillows	4 50
One bureau	12 00
One bureau washstand	7 00
One chandelier	12 00
One hanging lamp	8 00
One lamp at $2; one at $2.50; one at 50 cents	5 00
Sewing-machine	95 00
One center-table	7 00
One card-table at $4; one at $3	7 00
One desk and contents	15 00
One large packing-case, made to order	10 00
One medium packing-case, made to order	5 00
Chest, with trays, for retained papers, &c., made to order	20 00
One lounge, folding (damaged)	15 00
One lounge, common	3 00
Pillows for same	2 00
One guitar and case	25 00
Curtains	10 00
Toilet and chamber sets	8 00
Bedding, consisting of counterpanes, blankets, comforts, quilts, sheets, &c	75 00
Napkins and towels	15 00
Child's carriage	15 00
Mirror	5 00
Water-cooler	4 00
Folding clothes horses, 2 sets, at $1	2 00
One tent model	8 00
One ice-cream freezer	3 00
Box, gun-fixings, and fishing-tackle	8 00
One large chromo (landscape)	25 00

One medium chromo (landscape)	$8 00
One pair chromos	16 00
One pair steel engravings, colored	12 00
Five small steel engravings, at $1.50 each	7 50
One pair statuettes	5 00
One pair vases	6 00
Do	3 00
One bracket at $2; four brackets at $1 each	6 00
Table and kitchen ware	50 00
Silver and plated ware, viz, ice-pitcher, table and tea spoons, knives, forks, cups, goblets, &c	80 00
Books, music, &c.:	
Large quarto bible, illustrated	25 00
Two books music, bound, each $12	24 00
Sheet music and other music books	18 00
Bound copy of Aldine	9 00
One hundred volumes religious, military, and historical works, travels, poetry, works of fiction, &c	200 00
Case mathematical instruments	15 00
Steel dies, ten in number	10 00
Clothing:	
One citizen suit	35 00
Do	20 00
Four linen suits	35 00
Two overcoats, each $7	14 00
Boots, $10; shoes, $5	15 00
Two forage caps	8 00
Uniform pants	4 00
Uniform pants, officers'	11 00
Riding pants	5 00
Gloves and gauntlets	6 00
Saddlery, &c.:	
Gent's saddle, made to order	20 00
Gent's saddle-blanket	3 00
Saddle-bags, made to order	12 00
Two bridles, $8; two steel bits, $7	15 00
Martingales, $3; leather leggings, $7	10 00
Lady's saddle, made to order	65 00
Blanket for same	4 00
Bridle (steel bit), $7; whip, $1	8 00
Horse-covers, comb, and brushes, &c	8 00
Hunting-belt, holsters, knife, &c	5 00
Total value	1,396 00

I certify that the above-named articles were lost by the wreck of the steamer J. D. Cameron, in May, 1877, while en route from Fort Leavenworth, Kansas, to Tongue River, Montana Territory; that the prices given are not greater than would necessarily be paid to replace said articles; and that I have not received from any source any reimbursement for their loss, and have no claim on any insurance company therefor.

HENRY ROMSYN,
First-Lieutenant Fifth Infantry.

Schedule of property lost by the sinking of the United States steamer J. D. Cameron, May, 1877.

	Value.
Two carpets	$70 00
One cooking-stove and fixtures	35 00
One hair-mattress	30 00
Clothing	25 00
Drawing instruments, desk, tools, and books	125 00
Total	285 00

I certify that the above is correct to the best of my knowledge and belief.

T. H. LOGAN,
First-Lieutenant Fifth Infantry.

FORT KEOGH, MONTANA, *January* 8, 1878.

I certify that my loss in household effects and personal property, resulting from the sinking of the steamer J. D. Cameron in the Missouri River, May 18, 1877, amounted to fifteen hundred and seventy-six dollars ($1,576).

G. W. BAIRD,
First Lieutenant and Adjutant Fifth Infantry.

CANTONMENT ON TONGUE RIVER,
September 5, 1877.

I certify on honor that I lost on the United States steamer J. Don Cameron, May 18, 1877, all my household furniture, personal effects, and wearing-apparel, to the amount of fourteen hundred and seventy-four dollars and fifty cents ($1,474.50).

MASON CARTER,
First Lieutenant Fifth Infantry.

I certify on honor that the loss in household effects and personal property sustained by me through the sinking of the United States Government steamer Don Cameron in the Missouri River on the 18th day of May, 1877, amounts in money value to the sum of two thousand one hundred and eighty-two dollars ($2,182).

THEO. F. FORBES,
First Lieutenant Fifth Infantry.

FORT KEOGH, MONTANA, *December* 31, 1877.

I certify on honor that my losses of household goods, personal property, and stores incurred by the wreck of the United States steamer J. D. Cameron, in the Missouri River, on the 18th of May, 1877, amount to the sum of $1,557.10.

F. H. HATHAWAY,
Second Lieut. and Regimental Quartermaster Fifth Infantry.

I certify on honor that the following articles belonging to me, of the value stated, were, to the best of my knowledge and belief, on board the steamer J. Donald Cameron, when the same was wrecked on the Missouri River, and that the said articles were lost by the wreck of the said steamer, viz:

1 writing desk, books, and stationery	$27
3 barrels crockery, glassware, and lamps	40
1 bureau	19
1 buggy whip, rug, and sheepskin	7
4 chairs, (one rocking-chair damaged)	10
Total	103

J. W. POPE,
Second Lieutenant Fifth Infantry.

I certify that my loss by the sinking of the United States steamer Don Cameron, in the Missouri River, on the 18th day of May, 1877, amounts to the sum of $150, consisting of clothing, books, linen, &c.

THOS. M. WOODRUFF,
Lieutenant Fifth Infantry.

FORT KEOGH, MONT., *January* 5, 1878.

I certify on honor that the loss in household property and personal effects sustained by me through the sinking of the United States Government steamer Don Cameron, in the Missouri River, on the 18th day of May, 1877, amounts in money value to the sum of $1,500.

D. Q. ROUSSEAU,
Second Lieutenant Fifth Infantry.

CANTONMENT, TONGUE RIVER, MONTANA,
September 1, 1877.

I hereby certify on honor that my personal property, consisting of furniture, private library, clothing, bedding, and house-linen, was shipped on board the government transport J. D. Cameron, and that said transport was wrecked on or about May 18, 1877, in the Missouri River, near Sioux City, Iowa, and that my personal property above designated was lost.

I further certify on honor that the money-value of my said property amounted to the sum of $1,125, divided, as near as may be, as follows: Furniture, $250; clothing, &c., $375; and private library, $500.

I further certify on honor that I have recovered none of the said property, and that there was no insurance effected on said property.

Very respectfully,

CHAS. B. THOMPSON,
Second Lieutenant Fifth Infantry.

CANTONMENT MOUTH OF TONGUE RIVER, MONTANA,
September 1, 1877.

I certify on honor that the loss in personal property sustained by me through the sinking of the United States Government steamer Don Cameron in the Missouri River on the 18th day of May, 1877, amounts in money-value to the sum of four hundred and ninety-seven dollars and twelve cents ($497.12).

OSCAR F. LONG,
Second Lieutenant Fifth United States Infantry.

TONGUE RIVER, MONTANA,
September 7, 1877.

I certify on honor that my loss of personal property in the wreck of the United State steamer J. D. Cameron on the Missiouri River, on the 18th of May, 1877, was as follows:

Silver ware	$43 00
Bedding	40 00
Two students' lamps	12 00
	95 00

C. E. HARGOUS,
Second Lieutenant Fifth Infantry.

HEADQUARTERS FIFTH INFANTRY,
Fort Keogh, Montana, January 9, 1878.

Respectfully forwarded (through intermediate headquarters), with request that this petition receive early attention, and be submitted to the Congress for its action.

NELSON A. MILES,
Colonel Fifth Infantry, Commanding.

[2d indorsement.]

HEADQUARTERS DEPARTMENT OF DAKOTA,
Saint Paul, Minn., January 25, 1878.

Respectfully forwarded to headquarters military division of the Missouri, and earnestly recommended.

ALFRED H. TERRY,
Brigadier-General, Commanding.

[3d indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, January 28, 1878.

Respectfully forwarded to the Adjutant-General of the Army, in the absence of the Lieutenant-General commanding.

S. A. DRUM,
Assistant Adjutant General.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 55.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of March 28, 1878, information in relation to the preservation of the water-front at Vicksburg, Miss.

APRIL 4, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 4, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in compliance with Senate resolution of the 28th ultimo, a "copy of the report of a board of engineers on the preservation of the water-front at Vicksburg, Miss., and of the letter of the Chief of Engineers submitting the same, with the maps and estimates in relation thereto which have been prepared by said board."

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., April 3, 1878.

SIR: I beg leave to return herewith the resolution of the Senate of the United States of the 28th March, "That the Secretary of War be, and he is hereby, instructed to transmit to the Senate copies of the report of a board of engineers on the preservation of the water-front at Vicksburg, Miss., and of the letter of the Chief of Engineers submitting the same, with the maps and estimates in relation thereto which have been prepared by said board," and in compliance therewith, to submit a copy of the report of the board of engineers and accompanying maps and of the letter of the Chief of Engineers of the 4th March, 1878, submitting the same.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brig. General and Chief of Engineers.

Hon. GEO. W. McCRARY,
Secretary of War.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., March 4, 1878.

SIR: I beg leave to return herewith the resolution of the House of Representatives of February 5, 1878—

> That the Secretary of War be, and he is hereby, directed to furnish this House with all the information in his department touching the destruction of the river-front at Vicksburg, Miss., and the estimated cost for preserving the same,

and, in conformity with its requirements, to submit the inclosed copy of the report of a board of engineers, constituted by Special Orders No. 141, Headquarters of the Army, Adjutant-General's Office, dated June 28, 1877, to examine and report upon the most advisable means of preserving the water-front of Vicksburg, and of arresting the danger which appears to be apprehended from the cut-off opposite that city.

The board is of the opinion that the works recommended for the protection of the water-front should be taken up in the following order:

1. Protection of Delta Point, estimated cost	$84,000
2. Construction of bar-dike, estimated cost	90,100
3. Dredging out inner harbor, estimated cost	80,000
Total estimated cost	254,100
4. Diversion into the lake of the Yazoo River, by Long Lake route, estimated cost	$1,830,000

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

PRESERVATION OF THE WATER-FRONT OF VICKSBURG, MISS.

SAINT LOUIS, MO., *January 22, 1878.*

GENERAL: The board of engineers constituted by paragraph 6, Special Orders No. 141, from headquarters of the Army, Adjutant-General's Office, dated Washington, D. C., June 28, 1877, to examine and report upon the most advisable means of preserving the water-front of Vicksburg, and of arresting the danger which appears to be apprehended from the cut-off opposite that city, having been reconvened by its president, met in Saint Louis on January 14, 1878.

In the report of the board dated July 20, 1877, it was stated that the facts then in their possession were not sufficiently comprehensive to enable them to submit either a definite plan or estimate for accomplishing the object proposed for their consideration. In view of this fact, a committee of citizens of the city of Vicksburg undertook to have such surveys made as the board deemed necessary for a full understanding of the subject. These surveys were made during the course of the past season, and the results obtained with the necessary maps and profiles have been placed at the disposal of the board. We are therefore enabled to submit a final report upon the subject.

The preliminary report of the board sets forth the condition of affairs at Vicksburg at the date of their visit. Since that time the recession of the Delta Point has been steadily progressing as well as the caving of the Mississippi bank below Vicksburg. The erosion at the point has

been at the rate of 300 feet a month during the flood stages, and will probably average over 100 feet per month throughout the year. The dry bar below the point moves down with it, and has already extended past the landing at Delta.

The filling up of the harbor of Vicksburg has progressed rapidly, and although the extreme stage of low water was not reached, the soundings taken about the middle of August, 1877, showed that at low water the bottom of the river would be dry as far up as Crawford street, between the elevator and wharf-boat. This filling in has been going on ever since, so that the situation of affairs is really much worse than is shown by the maps. It appears from the soundings and from float observations, that a considerable quantity of water thrown off from the main body of the stream follows approximately the direction of the shore-line above the Delta Point, and striking the Vicksburg shore obliquely is deflected up-stream as an eddy current, having along the city front a velocity of about a mile an hour. The water thus entering the lower end of the harbor flows around De Soto Island and out at the upper end of the lake. The action of this eddy current has been to cause an immense deposit of mud in the harbor itself, and also on the line of an ideal prolongation of De Soto Island towards Ryan's saw-mill. The west end of the old bed has not been appreciately silted up, all the deposits having apparently taken place in the portion nearest Vicksburg.

It appears from these facts that if at the time of the cut-off the Delta Point had been held this mud-carrying current would have passed up to the west of De Soto Island, and that channel would have been silted up and closed, as is usually the case with these cut-off lakes.

The harbor in that case would probably have remained an open lake, having a narrow passage to the river at its lower end; but this passage could probably have been enlarged and kept open by a moderate amount of dredging annually. As the case actually stood, however, the Delta Point was unprotected, and receded rapidly under the action of the current, so that the water thrown off from the main body in the direction of the old channel, instead of being deflected by the island into the west arm of the lake, was allowed to strike the Vicksburg shore and to be by that means directed into the east arm of the lake or harbor proper.

Even if the Delta Point were held, this depositing action would continue until the bar reached the surface of the water and formed a new shore-line. After this was the case the upper or west arm of the lake would receive the deposit and would soon fill up. The continued caving of the Delta Point carries the whole river down stream, and farther from the city landing, and should be at once checked no matter what the subsequent plan of improvement may be, for a continuance of this action will greatly increase the ultimate cost of any plan of clearing the entrance to the harbor.

The board are of the opinion that this protection should cover about 7,000 feet of the shore above the Delta Point. The plan they propose contemplates a double row of brush mattresses each 75 feet wide by 100 feet in length, which shall be sunk against the bank and form a continuous revetment, extending from low-water mark 150 feet out along the bottom. These mattresses should be two feet in thickness and be held in place by a light covering of stone or other heavy material.

The next thing to be done will be to cut off the eddy current from the harbor, and this can only be done by the construction of works which will form an artificial prolongation of De Soto Island. A dike built on the line shown on the map would answer this purpose if carried up to high-water mark, but would necessarily be very costly. It

would be possible to build it in installments, allowing the bar to fill up around it and then raising the crest until the desired height was attained. But either method would be expensive and would require a massiveness of construction altogether out of proportion to the resistance it is expected to overcome. The object desired is to obstruct this current so as to induce a rapid deposit on the outer slope and crest of the bar. This end would be accomplished by the means already referred to, but it is desirable that less expensive ones should be used if possible.

For this reason the board recommend the employment of a method which has been successfully used in India, and also on the Missouri River at Nebraska City. Long, loose bundles of brush are made, which, when completed, are forty or fifty feet long and five or six feet in diameter. They are constructed by firmly lashing the butts of the rush to a small rope, which serves as a core, and when completed they are anchored along any line selected, so as to float approximately upright in the water. The free end is to be buoyed up by empty barrels, and bags or barrels filled with clay or stone will serve as anchors. The action of a sufficient number of these brush ropes is to check the current and induce a rapid deposit. By making the ropes sufficiently long they can be made to reach to the surface of the water, even when in flood, and will thus at once cut off the eddy current which carries the mud into the harbor. The board are disposed to think that by the use of this simple and inexpensive device the bar may be raised to such height that a dike of comparatively small dimensions will suffice for the protection of the harbor.

When the eddy current is cut off from the east arm, it will probably flow in at the other end of the lake, which will rapidly silt up, and this action, while in many ways beneficial, will not be at all injurious to the harbor of Vicksburg. There will then still remain the task of clearing away the mud from the front of the landing, and this, although extensive in amount, can still, owing to the softness of the material, be dredged out at comparatively little cost. After the Delta Point has been protected, and the bar-dike raised to high-water mark, it is probable that a small annual outlay will be required to keep the mouth of the harbor open.

The attention of the board was urgently called to the plan advocated of opening communication between the Yazoo River and the head of the lake, so as to cause the Yazoo to flow past Vicksburg and keep the harbor open. At the request of the board, the surveys executed by the city were extended so as to embrace the various lines communicating with the Yazoo, and we have formed estimates of the cost of carrying it out by three different routes. The discharge of the Yazoo at low water is too small to remove the immense accumulation of mud already in place, but it might obviate the necessity for annual dredging if the works already described were once completed. To carry out the idea, it would be necessary to dam the Yazoo below the new channel, and also to carry a dam across the west arm of the lake, so as to force the Yazoo to flow past Vicksburg.

This latter operation would be very expensive under the present condition of affairs, but the cost would be much lessened, if not done away with entirely, if the other works recommended were first constructed and the west arm of the lake allowed to silt up.

The first route examined runs through Chickasaw Bayou and McNutt's Lake; the second through Boat Slough, Indian Camp, and Flat Lakes; the third through the dead end of Old River, Long Lake, and Cat-Tail

Bayou. The last mentioned is the shortest and most desirable route, both as regards expense and damage to property.

The board are of the opinion that the works here considered should be taken up in the following order:

1. Protection of Delta Point.
2. Construction of bar-dike.
3. Dredging out of inner harbor.
4. Diversion into the lake of the Yazoo River.

ESTIMATES.

Revetment of Delta Point.

Protection of 7,060 feet of shore-line, by mattress revetment, 150 feet wide and 2 feet thick, at $12 per linear foot of bank		$84,000

Construction of dike and dredging.

First estimate:		
Cross dike, 40 feet high and 2,100 feet long, composed of brush and stone and held by piles	$42,000	
Longitudinal dike, 40 feet high, 3,000 feet long, built as above but wider	112,000	
Total cost of dike raised to average high-water mark		154,000
Dredging		100,000
		254,000
Second estimate:		
Dike built in installments, 20 feet first season, and raised 10 feet in each of two succeeding seasons:		
First season, 20 feet high	$73,100	
Second season, raised 10 feet	20,000	
Third season, raised 10 feet	20,000	
		113,100
Dredging		100,000
		213,100
Third estimate:		
Surface of bar raised by system of brush ropes, and dike 20 feet high built on top:		
Cost of brush ropes	$17,000	
Dike 20 feet high	73,100	
		90,100
Dredging		80,000
		170,100

Diverting the Yazoo River.

Chickasaw Bayou route:		
Dam across Yazoo River below mouth of Chickasaw Bayou	$88,000	
Excavation, 12,500,000 cubic yards, at 20 cents	2,430,000	
Dam across Lake Centennial	180,000	
		2,698,000
Boat Slough route:		
Dam across Yazoo River	88,000	
Excavating 11,350,000 cubic yards, at 20 cents	2,270,000	
Dam across Lake Centennial	180,000	
		2,538,000
Long Lake route:		
Dam across Old River	300,000	
Excavating 6,500,000 cubic yards, at 20 cents	1,350,000	
Dam across Lake Centennial	180,000	
		1,830,000

Recapitulation.

Revetment of Delta Point	$84,000
Construction of dike, third estimate	90,100
Dredging	80,000
Total	254,100
Division of Yazoo River by Long Lake route	1,830,000

The following appendices are attached to this report:

A. Copy of order convening the board.
B. Preliminary report of July 20, 1877.
C. Copy of a letter addressed by the board to the chairman of the citizens' committee of the city of Vicksburg.
D. Copy of order reconvening the board.
E. Report made to the board by Mr. T. G. Dabney, C. E., on the surveys executed by him for the citizens' committee of the city of Vicksburg.
F. Map showing harbor of Vicksburg and Yazoo River, with proposed routes of communication. Reduced from the copy furnished by the citizens' committee of the city of Vicksburg. Scale 1 inch to 2,000 feet.
G. Map showing harbor of Vicksburg and works proposed by the board. Reduced from the copy furnished by the citizens' committee of the city of Vicksburg. Scale 1 inch to 1,000 feet.

All of which is respectfully submitted, by your obedient servants,

J. H. SIMPSON,
Colonel Engineers and Brevet Brigadier-General, President of Board.
CHAS. R. SUTER,
Major of Engineers.
W. H. H. BENYAURD,
Captain of Engineers.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers U. S. A.

A.

ORDER CONVENING THE BOARD.

[Special Orders No. 141.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 28, 1877.

[Extract.]

* * * * * * *

6. By direction of the Secretary of War, a board of engineers, to consist of Col. J. H. Simpson, Maj. C. R. Suter, and Capt. W. H. H. Benyaurd, will assemble at Vicksburg, Miss., on the 17th day of July, 1877, or as soon thereafter as practicable, to examine and report upon the most advisable means of preserving the water-front of Vicksburg, and of arresting the danger which appears to be apprehended from the cut-off opposite that city.

The board will also submit such estimates as may be thought advisable to present to the early consideration of Congress.

The junior member will act as recorder.

* * * * * * *

By command of General Sherman.

THOMAS M. VINCENT,
Assistant Adjutant-General.

Official:
L. H. PELOUZE,
Assistant Adjutant-General.

B.

PRELIMINARY REPORT OF THE BOARD.

VICKSBURG, MISS., *July* 20, 1877.

GENERAL: The board of engineers constituted by paragraph 6, Special Orders No. 141, from headquarters of the Army, Adjutant-General's Office, Washington, June 28, 1877, to examine and report upon the most advisable means of preserving the water-front of Vicksburg, and of arresting the danger which appears to be apprehended from the cut-off opposite that city, have the honor to report that in accordance with the above orders they met at Vicksburg on the 17th instant, and proceeded to investigate the subject committed to their charge.

The rapid deterioration and threatened destruction of their harbor since the formation in 1876 of the cut-off below the town, has been a matter of much concern to the citizens of Vicksburg. They have had a survey executed of the harbor and peninsula opposite and propose to make other surveys which are needed for a full understanding of the subject.

Briefly stated, the situation is as follows:

The break through the old peninsula is now about 6,000 feet wide, the upper edge being opposite a point in Vicksburg, midway between the marine hospital and the Prentiss House. The cut is rapidly widening, the Louisiana point receding toward Delta. The *débris* washed away is swept around the point, and forms a large bar, dry at present stage of water (35 feet by gauge), and extending down past the wharf-boat at Delta. The low ground below Vicksburg receiving the direct impact of the tremendous current is going in very rapidly. The water-slope is over 6 inches to the mile, and soundings made in our presence along the shore failed to find bottom with a line 150 feet in length. In the line of the cut-off a great bar is forming, which will probably be dry at low water, and will extend from the farther Mississippi shore across the ends of the lake nearly to the Vicksburg wharf. This bar, lying directly in the line of high-water deposits, is sure to grow very rapidly, and to be composed of hard materials. Above the point where the current strikes the Vicksburg shore a strong eddy sets up stream along the wharf-front. This eddy carries up vast quantities of mud, and threatens soon to fill up the lower end of the harbor.

According to some soundings made by citizens interested in the matter, this fill, during the past month. amounts to 8 or 10 feet, and the present depth opposite the wharf-boat indicates that even without further increments the bottom will be bare at low water. Our information is not sufficiently extensive to enable us to say definitely how far down this will extend; but it seems probable that during the coming low water access to the wharf-boat, elevator, and in fact to the whole water-front will be cut off. The recession of the Delta Point, about 600 feet a month, will, of course, extend this mud-bar down stream at a corresponding rate.

There is no telling where this recession will cease, but it is probable that it will continue nearly, if not quite, down to Delta, about a mile below its present location. The caving of the bank at King's Point above the cut-off, and of the shore below Vicksburg, are favorable for restoring the equilibrium, but unless prevented the erosion will probably go on to the extent indicated at least. It may, therefore, be necessary to hold this point; it certainly appears so at present, but we cannot decide definitely on this subject until we know what changes may take place at low water.

The all-important point of keeping open the harbor of Vicksburg has been considered by us as well as the meager information at our command would allow; but at present we can only state the necessity of maintaining a dredged channel seems inevitable. A proposition advanced meets much favor here, viz, to turn the Yazoo River down Chickasaw Bayou, and bring it into the lake near the national cemetery, with a view to keeping the harbor open. Careful surveys and measurements will be needed to decide this point, and until we have these data we cannot give a decided opinion. If this can be done without injury to the navigation of the Yazoo, the influx of that stream, if properly controlled, might at least prevent the entrance of the mud-depositing eddy current from the Mississippi, and to that extent maintain an open harbor; but we do not believe that it would supersede the necessity of dredging at its confluence with the Mississippi.

The citizens of Vicksburg propose to make the required examinations, and to furnish us with the results. We have therefore concluded to adjourn until we are put in possession of this information, when a full report, with estimates, will be forwarded to you for the consideration of Congress.

All of which is respectfully submitted.

J. H. SIMPSON,
Colonel Engineers, Brevet Brigadier-General U. S. A., President of Board.
CHAS. R. SUTER,
Major of Engineers.
W. H. H. BENYAURD,
Captain of Engineers.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers United States Army.

C.

LETTER ADDRESSED BY THE BOARD TO THE CHAIRMAN OF THE CITIZENS' COMMITTEE OF THE CITY OF VICKSBURG.

VICKSBURG, MISS., *July* 20, 1877.

DEAR SIR: The board of engineers directed by the Secretary of War to examine and report upon the most advisable means of preserving the water-front of Vicksburg, appreciating the great importance of the question to the city, and desiring to arrive at some proper solution at as early a day as practicable for the consideration of Congress, wish to state that at the present time they have not sufficient data at their command for so full and complete an investigation as a subject of so much importance demands.

As no funds were furnished the board with which to make the necessary surveys and examinations, it is respectfully requested, if within the power of your committee, that the surveys already commenced by you be continued so as to embrace all the points enumerated below, and the information be furnished at the earliest date practicable. The board will then be in a condition to consider the subject in all its bearings, with the hope that some plan may be devised for the protection of the water-front of your city.

There will be required a survey of inner harbor from national cemetery to point where bank begins caving, showing cross-sections of water-way, the distances apart increasing toward the upper end, say four sections below Glass Bayou and two above; one section from old point of peninsula to bight of bend; two sections on upper side of island at end nearest the Mississippi. Each cross-section should have at least thirty well-distributed soundings.

Shore-line of Louisiana Point and low ground below Vicksburg at low water.

Outlines of principal bars at present stage and at low water.

Longitudinal profile at present stage and at low water of water surface along Louisiana Point, from one mile above the point at Delta, following the channel line, with located soundings on same line.

Cross-sections of the Mississippi River at present stage and at low water, say one section back of Delta; one from point to opposite side of cut-off; one from point to Vicksburg shore running across the bar; and one more half way down to Delta.

Current observations with floats to show direction and velocity of currents into and through the inner harbor, both at present stage and at low water.

Survey from head of lake to Yazoo River along Chickasaw Bayou, &c., and up the Yazoo to Snyder's Bluff. This should be made at low water.

Careful profile along whole route, with profile of Yazoo River from head of survey to head of proposed cut.

Cross-section and measured discharge of Yazoo River at low water.

Cross-section of Yazoo at site of proposed dam.

Sections along the bayou and route to show amount of cut required.

Very respectfully, your obedient servant,

J. H. SIMPSON,
Colonel of Engineers, President of the Board.

To Mr. J. F. BAUM,
Chairman Citizens' Committee.

D.

ORDER RECONVENING THE BOARD.

ENGINEER'S OFFICE, UNITED STATES ARMY,
Saint Louis, Mo., January 10, 1878.

The board of engineers constituted by Special Orders No. 141, Headquarters of the Army, Adjutant-General's Office, dated June 28, 1877, will reassemble at Saint Louis, Mo., on the 14th day of January, 1878, "to examine and report upon the most advisable means of preserving the water-front of Vicksburg, and of arresting the danger which appears to be apprehended from the cut-off opposite that city."

J. H. SIMPSON,
Colonel of Engineers, President of the Board.

E.

REPORT OF MR. T. G. DABNEY, CIVIL ENGINEER.

VICKSBURG, MISS, *January* 10, 1878.

GENTLEMEN: In compliance with the request contained in your letter of July 20 last, to the citizens' committee of the city of Vicksburg, that additional surveys and examinations be made for the purpose of affording information which would enable you to determine upon some practicable plan, if possible, for the preservation of Vicksburg's water-front, I have the honor to report that, having been authorized and employed by the city authorities to execute the work required to be done, I proceeded at once to do so, and having made the examinations specifically indicated in your letter above referred to, I extended my operations further, with your approval, so as to comprehend more ground, and cover a wider field of inquiry.

The most prominent feature in the work required appeared to be the examination of the Yazoo River, to ascertain its volume of discharge at low water, the profile of its surface along the lower reaches, and to examine the channels of Chickasaw Bayou and McNutt's Lake, with a view to determining if it were feasible and expedient to divert the Yazoo River from its present course through those channels into the newly-formed lake at Vicksburg, so as to cause its waters to flow through the harbor and by the landing of the town, and also to ascertain the cost of such work.

I therefore made a careful examination with this object, and then examined a number of other possible routes through which the Yazoo might be made to pass, to wit: One embracing Thompson's Lake; another embracing Boat Slough, Indian Camp, and Flat Lakes; another through the "Dead End" of Old River, Long Lake, and Cat-tail Bayou; and a fourth through Barnett's Lake and Willow Bayou.

These lakes and channels were all carefully sounded, and cross-sections made where it was deemed desirable to have them. There were also lines of levels taken along all the various lines of survey connecting the Yazoo River with the lake at Vicksburg and the interlying lakes and channels.

A traverse line was carried along the bank of the Yazoo, from Snyder's Bluff to its mouth, and along Old River to the Mississippi, and thence along the left bank of the latter to King's Point, where it connected with the system of triangulation previously made, which covered the lake and river in the vicinity of Vicksburg and Delta. All of the other convergent lines of survey from the Yazoo also connected with the harbor system. The traverse along Yazoo and Old Rivers was made to take in both banks by deflections on flags set on the opposite sides. The profile of the Yazoo was also carried down to its mouth and through Old River to the Mississippi, and down the latter to the landing at Delta.

At a point on the right bank of Old River, about four miles above its entrance into the Mississippi, the latter had, by caving away the east bank in the bend outside of Pawpaw Island, approached to a distance of only 275 feet from the other. The difference in the elevation of the water was found to be 1.10 feet in favor of the Mississippi. This difference, at a much higher stage of water, was nearly double the above figure, being 2.05 feet. The respective stages were 15 and 42 feet above low water. It had been suggested that a part of the water from the Mississippi might be made available by an excavation through this narrow neck. I therefore ran a line from this point across the peninsula formed by the two ends of Old River to a point opposite the western end of Long Lake.

It is proper to observe, however, that the Mississippi has almost forsaken the bend on this side of Pawpaw Island for the shorter route west of it—one of the consequences of the Vicksburg cut-off—and this bend is shoaling up.

The difference in elevation of the surface of water in the Yazoo and that in the lake at Vicksburg varied very little on the several lines examined, as the fall in the Yazoo was very slight with the then prevailing relative stage in the Mississippi. The maximum difference was found to be 1.67 feet, which is not sufficiently great, in my opinion, to endanger the navigation of that stream, if it should be turned along any of those lines into the Vicksburg Harbor.

The profile of the Yazoo, as determined by my observations, has, I think, but little significance, since it is so easily influenced by the relative stage in the Mississippi that a rise or fall in the latter would effect important modifications in the former.

Upon gauging the flow of the Yazoo at two different stages, to wit, 6 and 10 feet above low water, the discharge was found to be respectively 3,667 and 3,371 cubic feet per second.

An elaborate system of soundings was made, covering the harbor and lake at Vicksburg and the Mississippi River from King's Point above to the Delta Landing below. There was found to be a reversed current running through the harbor and lake, entering at the lower end, passing along in front of the town, rounding the northern end of the island, and thence passing into the river again through the upper end of the lake.

This current from Ryan's Mill to the Cotton Compress, a distance of 2,300 feet, has a velocity (mean) of 1.81 feet per second, and from the compress to the mouth of Glass's Bayou, 4,600 feet, the mean velocity is 1.10 feet per second; the stage of water being 17 feet above low water. The velocity is greater for a higher stage and less for a lower.

After passing Glass's Bayou the velocity diminishes, until, having reached the large volume of water at the northern end of the island, its further progress can scarcely be perceived, but becomes more marked with the reduced section as it approaches the southern end of the island on the upper side and passes out into the main current of the river.

Subsequent observations here, with the water 24 feet above low water, showed a velocity of 0.54 feet per second from a point 5,000 feet above the lower end of the island until it came within the influence of the main current.

This stream of water conveys a large quantity of mud and sand, held in suspension, into the harbor, nearly the whole of which is precipitated in front of the landing. This result is decidedly shown by the soundings taken and by the different color of the water after reaching the upper end of the island.

There is a large area of the harbor upon which, at the date of the soundings taken, from the 13th to the 20th of August last, the bottom had been raised to the level of the low-water plane, and a portion considerably above, indicating a deposit of about 50 feet in depth since the cut-off, which occurred April 27, 1876. This area occupies that portion of the harbor immediately in front of the landing, and extends entirely across to the island.

The point of the Delta Peninsula was found to have receded by caving 975 feet from the middle of March to the middle of August last. This period covered a little more than one-half of the rapidly-caving stage of the river, so that the average rate per month for the whole year may be taken at about 125 feet.

In view of the enormous deposit going on in the harbor, together with the rapid recession of the main channel in consequence of the caving of Delta Point, it is not difficult to conjecture what will be the fate of Vicksburg's commerce at a time in the near future if these baleful agencies are not speedily arrested. And I will here take the liberty to urge especially the importance of prompt measures to check the further encroachment of the river upon Delta Point, the effect of its continuance being to greatly increase the difficulties to be encountered.

I submit herewith a map showing accurately the positions of Vicksburg and delta, with the harbor and river adjacent; the Yazoo, Old River, and the Mississippi from Snyder's Bluff to delta, and all the lakes, bayous, old channels, and other features contiguous to the line of survey. Also, the soundings taken in the Mississippi River and harbor, Old River, and the various lakes examined, with profiles of the different lines of survey, and cross-sections of Yazoo River, Chickasaw Bayou, McNutt's Lake, and other channels.

I hope all the information has been afforded that you may find necessary to enable you to reach a solution of this problem, which is of so great importance to the commercial and other interests of the city of Vicksburg.


It may not be improper to remark that the destruction of Vicksburg's harbor closes access by water to the national cemetery, a work which has required a large expenditure of money, and which has been brought to such perfection of symmetry and beauty that it should be a matter of national pride to preserve to it the position originally designed in the selection of its location, overlooking the great national highway of commerce, which washes its outer wall with the waters collected from three-fourths of the Union, possibly bearing mementoes from every homestead of the poor fellows who lie there in eternal sleep where they fell in the service of their country.

I am indebted to my assistant, Mr. Horace M. Marshall, civil engineer, for careful and accurate levels taken by him and for other important service rendered.

Respectfully submitted,

T. G. DABNEY,
Civil Engineer.

Gen. J. H. SIMPSON,
President of Board of United States Engineers.


Appendix "F"
MAP
showing
HARBOR OF VICKSBURG AND YAZOO RIVER
with proposed routes of communication
Reduced from the copy furnished by the Citizens Committee
of the City of Vicksburg
Scale : one Inch to 4,000 Feet
To accompany report of Board of U.S. Engineer Officers convened
by S.O. No. 141 A.G.O. dated Washington D.C. June 28th 1877.
PAWPAW ISLAND
SAND BAR
PAWPAW ISLAND BEND of THE MISSISSIPPI RIVER
OLD RIVER (Live End)
OLD RIVER (Dead End)
Shoal Water
Low head
Bar low and grassy
Sloughs and Ridges
Heavy Timber and Heavy Cane
YAZOO RIVER
Steele's Bayou
KINGS POINT
True Meridian Variation 7° to East
BARNETT'S LAKE
Low Swamp
LOW SWAMP
Proposed Cut
Heavy Timber
Hicks Slough
Heavy Timber and Low Swamp
Cottonwood
Slough
Edge of Willows and small Cottonwoods
DELTA
LAKE
De Soto Island
CENTENNIAL
Line of proposed Dike
Shoreline March 1877
Swamp
VICKSBURG
National Cemetery
Yazoo Valley Road
Mud Bar
Indian Camp Lake
John Jones
LAKE PLACE
T. A. Marshall
CHICKASAW BAYOU
Swamp
THOMPSONS LAKE
Road to Vicksburg
Old Field
Cultivated Fields
Mrs. Blakes Plantation
Open Field
Road to Deer Creek

Appendix "G"

MAP

showing

HARBOR OF VICKSBURG

and proposed works

Reduced from the copy furnished by the Citizens' Committee of the City of Vicksburg.

Scale : one Inch to 2000 Feet

To accompany report of Board of U.S. Engineer Officers convened by S.O. № 141 A.G.O. dated Washington D.C. June 28th 1877.

Contour Lines show depth below 18 Ft. mark on gauge.



Appendix "K"

MAP

OF THE

HARBOR OF VICKSBURG AND YAZOO RIVER

PROFILES AND CROSS SECTIONS

Reduced from the copy furnished by the Citizens' Committee of the City of Vicksburg

To accompany report of Board of U.S. Engineer Officers convened by S.O. No 141 A.G.O. dated Washington D.C. June 28th 1877.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 56.

LETTER

FROM

THE SECRETARY OF THE NAVY,

COMMUNICATING,

In answer to a Senate resolution of April 1, 1878, *information in relation to existing vacancies in the Naval Establishment above the grade of captain.*

APRIL 4, 1878.—Ordered to lie on the table and be printed.

NAVY DEPARTMENT,
Washington, April 3, 1878.

SIR: I have the honor to acknowledge the receipt of an attested copy of a resolution passed by the Senate on the 1st instant directing the Secretary of the Navy to report to the Senate "the number of vacancies existing in the Naval Establishment above the grade of captain, with the dates when such vacancies occurred; and whether examinations for promotions to such vacancies have been had; and whether in any case re-examinations have been directed or had in respect of any such promotions, and if so, under what circumstances and authority of law."

Agreeably to the direction of the Senate, I have to report that at present there exist in the Naval Establishment three vacancies above the grade of captain, which are in the grade of commodore.

The first vacancy occurred December 1, 1877, caused by the death of Commodore C. H. B. Caldwell; the second, December 11, 1877, caused by the promotion of Commodore Daniel Ammen, to be a rear-admiral; the third, February 26, 1878, caused by the promotion of Commodore E. T. Nichols, to be a rear-admiral.

Examinations to fill all these vacancies have been had, viz: of Capt. Somerville Nicholson, in respect to the first; of Capt. William E. Hopkins, in respect to the second; and Capt. Thomas Pattison, in respect to the third.

A re-examination has been directed and had in one case, that of Captain Nicholson. The circumstances under which it was directed were that the finding of the first board by which he was examined was disapproved by the President.

The finding of the second board is now under consideration. The record is a voluminous one, and there are important legal questions involved in the case.

The authority of law for the re-examination is contained in the same statutes that provide for examination (sections 1493 to 1504 Revised Statutes). The record and finding of the examining board in the case of

each officer ordered before it must go to the President for his approval or disapproval of the finding. If he approves, the finding of the board is executed and carried into effect; if he disapproves, he can order a re-examination or not at his discretion.

I have the honor to be, very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 57.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

Estimates from the Paymaster-General and the Adjutant-General for the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors, from January 1, 1879, to June 30, 1879, and for the year ending June 30, 1879, to be substituted for estimates heretofore submitted for that purpose.

APRIL 5, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 4, 1878.

The Secretary of War has the honor to transmit to the Senate a communication from the Paymaster-General forwarding an estimate for collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors for the period from January 1, 1879, to June 30, 1879, under the act approved December 15, 1877; also, a communication from the Adjutant-General forwarding an estimate for collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors for the year ending June 30, 1879, to be substituted for estimate as printed on page 159, Book of Estimates for 1878–'79.

GEO. W. MCCRARY,
Secretary of War.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., January 8, 1878.

GENERAL: The act of Congress approved December 15, 1877, entitled "An act to provide deficiencies in the appropriations for the service of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for prior years, and for other purposes," appropriates for the "collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors," the sum of $20,000, which sum it is expressed in the act "is appropriated to close up and finish the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors; and if the work of collecting and paying said bounty and other claims shall not be finished before January first, eighteen hundred and seventy-nine, said bureau shall be closed, and all papers connected therewith shall be turned over to the department having charge of the payment of bounties due to white soldiers." (See General Orders No. 120, series of 1877, copy herewith.)

It will be observed that the act simply directs the transfer of the records on January 1, 1879, "to the department having charge of the payment of bounties due to white soldiers," and makes no provision for a continuance of the work of paying the claims of colored soldiers and sailors after that date. There can be no doubt, however, that the work will remain unfinished at the date named, and being of such a character as to render its completion necessary, it becomes important, if the transfer is, in fact, to be made, to make proper provision for the continuance of the work under the changes contemplated under the act referred to. It is accordingly recommended that, as preliminary thereto, the Paymaster-General of the Army, the officer charged with the payment of bounties due to white soldiers, be called upon to prepare and submit at the earliest practicable date an estimate of the appropriation necessary to conduct the work in accordance with existing laws, for the six months from January 1 to June 30, 1879.

It is suggested that the Paymaster-General be invited to call in person or to send a representative to this office, in order to obtain information in detail as to the duties that will devolve upon his department under the act above mentioned.

A difficulty will arise in regard to the records to be transferred, for they constitute the entire records of the late Bureau of Refugees, Freedmen, and Abandoned Lands, comprising several thousand volumes of books, and a corresponding quantity of paper records. They properly, from their character, pertain to the Adjutant-General's Office, under the direction of the Secretary of War, and would only embarrass the Pay Department and the work of the War Department by transfer elsewhere. Therefore, in case after January 1, 1879, the work of paying should go to the Pay Department, the records should remain with the Adjutant-General, and an arrangement be made to supply the Pay Department with all needful information. And here it must be remembered that in no event could the muster-rolls and records, from which information is had to identify claimants, the most important thing connected with the payments, be transferred to the Pay Department, and this in itself is a sufficient reason why the work, until its entire completion, should remain exclusively under the Adjutant-General.

This communication should be considered in connection with one of this date from the Adjutant-General to the Second Auditor of the Treasury.

I am, sir, very respectfully, your obedient servant,

THOMAS M. VINCENT,
Assistant Adjutant General.

To the ADJUTANT-GENERAL OF THE ARMY.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., January 10, 1878.

GENERAL: Referring to the inclosed copy of a communication from Assistant Adjutant-General Thomas M. Vincent, U. S. A., furnished for your information, I have the honor to request that you will send an officer for the purpose therein indicated.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

To the PAYMASTER-GENERAL OF THE ARMY.

PAY DEPARTMENT, UNITED STATES ARMY,
Washington, D. C., January 25, 1878.

GENERAL: Having been designated by the Paymaster-General to make the payments of bounty, prize-money, &c., to colored soldiers and sailors, which, by the act approved December 15, 1877, will devolve upon the Pay Department after the 1st of January, 1879, I have prepared and have the honor to submit herewith an estimate of funds required to enable me to make the payments. As directed, I have conferred with the officer of the Adjutant-General's Office now charged with their payments in regard to the transfer of all records and papers connected therewith. It is thought the meaning of the law is that only such records or transcript of records as pertain to cases actually to be paid shall be furnished, which will be all that will be necessary to enable payment in each particular case.

If this construction of the law as to the transfer of all papers is correct, the difficulties pointed out by Major Vincent are removed, and all the records and papers will remain with the Adjutant-General.

Very respectfully, your obedient servant,

A. B. CAREY,
Paymaster, U. S. A.

The PAYMASTER GENERAL OF THE ARMY,
Washington, D. C.

WAR DEPARTMENT, PAYMASTER-GENERAL'S OFFICE,
Washington, January 25, 1878.

SIR: In compliance with your instructions contained in letter dated Adjutant-General's Office, January 10, 1878, I have the honor to submit herewith an estimate of the amount required under the title "Collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors" for the period from January 1 to June 30, 1879, inclusive, amounting to $8,000.

After conference with the officers of the Adjutant-General's Office heretofore charged with the application of the funds appropriated under this title, I conclude that the sum asked for will be sufficient for the purpose if disbursed under the direction of this office, as appears to be contemplated in the act approved December 15, 1877, in General Orders No. 120, Adjutant-General's Office, December 22, 1877.

In the opinion of this office, the operation of that act will not require the transfer to this office of all the records referred to in the Adjutant-General's letter above cited. It will be sufficient for the accomplishment of the purpose of the appropriation if such records or transcript of records as pertain to cases actually to be paid—that is to say, previously adjusted by the accounting-officers of the Treasury—shall be furnished as called for.

I inclose copy of Adjutant-General's letter above cited.

I am, sir, very respectfully, your obedient servant,

BENJ. ALVORD,
Paymaster-General U. S. A.

To the honorable the SECRETARY OF WAR.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1879, *by the Pay Department, United States Army.*

Detailed object of expenditure, and explanations.	Estimated amount which will be required for each detailed object of expenditure.	Total amount to be appropriated under each head of appropriation.	Amount appropriated for the current fiscal year ending June 30, 1878.
Collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors:			
For salaries of agents and clerks; stationery, and like necessary expenses; office furniture and repairs; mileage and transportation of officers and agents; telegraphing and postage from January 1, 1879, to June 30, 1879 (act of June 10, 1872, 17 Stat., p. 366, sec. 1, and act of December 15, 1877)	$8,000 00	$8,000 00	$35,000 00

BENJ. ALVORD,
Paymaster-General, U. S. A.

PAYMASTER-GENERAL'S OFFICE, *January* 25, 1878.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., April 1, 1878.

SIR: In compliance with your instructions, I have the honor to report that I doubt whether the sum of $8,000, estimated for by the Paymaster-General, will suffice to meet the expenses attending a proper payment of bounty-claims of colored soldiers for the period contemplated. The various points involved in this subject, and the views of this office in relation thereto, are fully set forth in my communication to you of this date, to which attention is respectfully invited.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

To the honorable the SECRETARY OF WAR.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., April 1, 1878.

SIR: In connection with my report of this date, returning the estimate of the Paymaster-General of the Army for $8,000 for payment of the expense of the collection and payment of bounties due colored soldiers, &c., for the six months ending June 30, 1879, I have the honor to invite attention to the fact that the act of Congress approved December 15, 1877, entitled "An act to provide for deficiencies in the appropriations for the service of the government for the fiscal year ending June 30, 1878, and for prior years, and for other purposes," appropriates $20,000 to "close up and finish the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors," but makes no provision for conducting the work from July 1, 1878, to January 1, 1879, the date when, under the provisions of said act, the office now charged with the collection and payment of said bounties will be closed. The Comptroller states that no part of this $20,000 will be applicable to a portion of the fiscal year beginning July 1, 1878.

It becomes important, therefore, that this fact should be placed before Congress with the view of securing the requisite appropriation to defray the expenses of conducting the work of collection and payment for the six months from July 1, 1878, to January 1, 1879.

I concur in the views of the Paymaster-General relative to the transfer of records, as expressed in his communication which accompanied his estimate for appropriation to defray the expenses of payment of bounties, &c., under the provisions of the act of December 15, 1877. The papers which said act directs shall be transferred "to the department having charge of the payment of bounties due to white soldiers" are viewed by me as those pertaining exclusively to such claims as may remain unpaid at the date of transfer, January 1, 1879. In fact, the character of the records pertaining to the general subject is such as to preclude a different view, inasmuch as they are so interwoven with the permanent muster-rolls and other records relating in part to continuous subjects pertaining exclusively to this office as to render their transfer to any other office or department wholly impracticable.

It should be borne in mind that the expense of the work of *payment* alone is inconsiderable in comparison with that of the work incident thereto and necessary to the protection of the public interest and those of claimants, and as the incidental labor is directly and immediately connected with the records which this office must of necessity retain, it becomes apparent that provision must be made to continue the work, in order that the department upon which the work of *payment* may devolve may be supplied with the data necessary to the proper identification of the claimants and to the protection of the interests involved.

From past experience, I am satisfied that it will require an appropriation of at least $30,000 to continue the work of collection and payment of bounties to January 1, 1879, and the furnishing of necessary data, as above indicated, from that date to June 30, 1879. I accordingly submit herewith an estimate for that amount, with recommendation that the same be sent to Congress in substitution for the estimate for $40,000 which was submitted to Congress prior to the passage of the act of December 15, 1877.

In connection with this subject, it is deemed important, as in the interest of the public service, to invite especial attention to letter from the Second Auditor of the Treasury dated January 25, 1878 (copy herewith), wherein, in reply to letter from this office soliciting an expression of his views as to the propriety of changing existing laws governing the payment of bounties to colored soldiers, sailors, &c., he reiterates the views expressed by him under date of April 24, 1872 (see Senate Ex. Doc. No. 46, 44th Congress, 1st session, copy herewith), and adds "that with the present facilities of your officers (disbursing officers), their knowledge of the requirements of this (Auditor's) office, their enlarged experience in uncovering frauds, detecting impostors and worthless and fraudulent claims, in securing to claimants current funds instead of checks, it would appear unwise to disturb the present relations of the bureau." As the wisdom of the views thus expressed by the Auditor is fully confirmed by the experience of this office and the results which have attended its operations, it would seem eminently proper to present the subject for the consideration of Congress and to urge the unquestionable advantage of continuing in force the existing laws governing the payment of the claims until the work—now in an advanced stage—shall have been finally completed. By the letter of the Auditor, it is shown that the system pursued by the Adjutant-General's office, in paying these bounties, saved to the Treasury upward

of $350,000, which, with less precaution, would have been lost. The necessity for the extra checks arises from the character of the claimants—ignorant colored people—who are surrounded by sharpers bent on depriving them of every cent due them, and by rogues of the same color who are taught to fraudulently represent parties to whom money is due. The system of checks illustrates the necessity under which a disbursing officer will lie to spend both time and money, and to travel through the localities where the claimants reside, if he will avoid paying to other than the true claimants. Of this system and the necessity for it the Pay Department is ignorant. It is not to be expected that that department should at once know what a long and singular experience alone can teach.

By this communication I desire both to vindicate the expenditures heretofore made by this office, and to indicate what will have to be proportionally made hereafter. I am not at all sanguine as to the saving to the government by the change of agents in paying these claims, for the Pay Department must use the same machinery as has been employed, if it will detect and defeat the frauds peculiar to the social condition of the beneficiaries; nor am I of opinion that the number of claims to be paid by the Pay Department (in the event of the transfer of the work of payment to that department) will be so small as is anticipated, especially if some of the contemplated bounty-bills should become law, as seems not improbable.

I respectfully ask attention to the following papers, herewith submitted:

First. General Orders No. 53, of 1867, publishing joint resolution of March 29, 1867, under which the claims in question are now payable.

Second. General Orders No. 55, of 1872, publishing such portion of the act of June 10, 1872, as abolished the Bureau of Refugees, Freedmen and Abandoned Lands, and devolved the work of paying bounties to colored sailors, &c., upon the War Department.

Third. General Orders No. 79, of 1872, promulgating the regulations under which the work is conducted.

Fourth. Senate Executive Document No. 46, Forty-fourth Congress, first session, being communication from the Secretary of War for the information of the Committee on Military Affairs in connection with Senate bill No. 637 relative to the payment of claims for bounties of colored soldiers, &c.

Fifth. General Orders No. 120, of 1877, publishing portions of the act of December 15, 1877, providing for the close of the work and transfer of papers, &c., on January 1, 1879, to the department having charge of payments to white soldiers.

I have respectfully to request that this communication and accompanying documents be transmitted to Congress for the information and action of the committees on appropriations.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

The Hon. the SECRETARY OF WAR.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1879, by the Freedmen's Branch, Adjutant-General's Office.

Detailed objects of expenditure, and explanations.	Estimated amount which will be required for each detailed object of expenditure.	Total amount to be appropriated under each head of appropriation.	Amount appropriated for the current fiscal year ending June 30, 1878.
Collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors: For salaries of agents and clerks; rent of office, fuel, lights, stationery, and similar necessaries; office furniture and repairs; transportation of officers and agents; telegraphing and postage; appropriated; 18 Stat., p. 390, sec. 1.....	$30 000	$30,000	$35,000

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, *April* 1, 1878.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
January 25, 1878.

SIR: I am in receipt of your letter of the 8th instant, in which you refer to that portion of the act approved December 15, 1877, entitled "An act to provide deficiencies in the appropriations for the service of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for prior years, and for other purposes," which relates to the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors. After quoting the provisions of the act, you say:

> It will be observed that this act makes no provision for the payment *in any manner* of the claims in question after January 1, 1879. Though unaware of the number of claims now pending settlement in your office, or of the number not yet presented, I feel safe in assuming that unless all claims before your office can be adjusted for payment by June 30, 1878, the work of collection and payment will not have been closed by the date named, January 1, 1879, and it will therefore be necessary to secure further legislation in order that the work of *payment* may be prosecuted to completion. I desire, however, before presenting the subject to the Secretary of War, that you will please favor me with an expression of your views as to the propriety of changing existing laws governing the payment of the claims of colored soldiers and sailors, &c.

I have no comment to offer upon the provisions of the law, further than to remark that the intention of Congress seems to have been that if the work of collecting and paying bounty and other claims shall not be finished before January 1, 1879, the papers connected with the bureau shall be turned over to the Treasury, the department having charge of the payment of bounties due to white soldiers, and that the settlement and payment of the claims should then be controlled by existing laws, or laws then in force governing the adjudication and payment of claims in cases of white soldiers.

As one of the accounting officers of the Treasury charged with the duty of examining and settling claims, I will say that from experience in dealing with these claims in cases of colored soldiers, I am of opinion that the interests of the government, the soldiers and their heirs, do not require a change of existing laws and methods of payment.

Since the transfer of the bureau, under the act approved June 10, 1872, the amount of money returned to the Treasury through this branch

of your office, by reason of fraud, death of claimants, inability to discover claimants, &c., aggregates upward of $350,000. Parties are continually applying for this money, either as the original claimants or their heirs, and the utmost care has to be exercised lest the government be imposed upon. There are several thousand original claims yet unadjusted; and with the claims yet being presented and those formerly rejected—which new attorneys are continually endeavoring to reopen—the increased difficulties encountered in obtaining satisfactory evidence and identifying soldiers or heirs, owing to the peculiar condition, changing of names, and migratory habits of the colored people, the necessity for the continuance of the present system of disbursement may exist for several years in order to afford protection to the government and honest claimants. Payment by check, as in cases of white soldiers, would open the doors to further fraud, and, as the colored people generally cannot write, the chances for a recovery of the money in cases of forgery would be very slight, as it is difficult to prove forgery of indorsement made by cross-mark.

I have now but to reiterate the sentiments expressed in my letter to the Hon. Secretary of War, dated April 24, 1872, and to add that with the present facilities of your officers, their knowledge of the requirements and regulations of this office, their enlarged experience in uncovering frauds, detecting impostors and worthless and fraudulent claims, in securing to claimants current funds instead of checks, it would appear unwise to disturb the present relations of the bureau.

Very respectfully, &c.,

E. B. FRENCH, *Auditor*.

Gen. E. D. TOWNSEND,
Adjutant-General U. S. A., War Department,
Washington, D. C.

[General Orders No. 53.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, April 11, 1867.

The following resolution of Congress is published for the information and government of all concerned:

[PUBLIC RESOLUTION—No. 25.]

A RESOLUTION in reference to the collection and payment of moneys due colored soldiers, sailors and marines, or their heirs.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all checks and Treasury certificates to be issued in the settlement of claims for pay, bounty, prize-money, or other moneys due to colored soldiers, sailors, or marines, or their legal representatives, now residing, or who may have resided, in any State in which slavery existed in the year eighteen hundred and sixty, the claim for which has been or may be prosecuted by an agent or attorney, shall be made payable to the Commissioner of the Freedmen's Bureau, who shall pay the said agent or attorney his lawful fees and expenses, and shall hold the balance subject to the order of the claimants on satisfactory identification; but no money shall be paid to any person except the claimant or his or her legal representatives, if deceased; nor shall any power of attorney, transfer, or assignment of the amount of said claims, or any part thereof, be recognized or allowed by the Commissioner, or by any officer or agent acting under him; and it shall be the duty of the said Commissioner, the officers and agents of the Freemen's Bureau, to facilitate as far as possible the discovery, identification, and payment of the claimants.

SEC. 2. *And be it further resolved,* That the Commissioner of the Freedmen's Bureau shall be held responsible for the safe custody and faithful disbursement of the funds hereby intrusted to him. In settling with the attorney or agent of the claimant strict com-

pliance with the scale of fees prescribed by the second section of a joint resolution approved June twenty-six, eighteen hundred and sixty-six, entitled "Joint resolution amendatory of a joint resolution respecting bounties to colored soldiers and the pensions, bounties, and allowances to their heirs," approved June fifteen, eighteen hundred and sixty-six, will, in every case, be required and enforced; and if any attorney or agent shall, in addition to notarial fees and expenses of collecting such claim, demand repayment for money loaned or advanced to any claimant, he shall be required to make oath to the date and amount of such loan or advance, or payment of the fees and expenses shall be withheld; and when the claimant shall have been properly identified, and his account is ready for settlement, the balance due shall be paid in current funds, and not in checks or drafts.

SEC. 3. *And be it further resolved*, That all money held or disbursed under the provisions of this resolution shall be held and disbursed under the same rules and regulations governing other disbursing officers of the Army.

Approved, March 29, 1867.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

[General Orders No. 55.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, June 25, 1872.

I. Pursuant to the provisions of the "Act (General Nature—No. 133) making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1873, and for other purposes," approved June 10, 1872, the Bureau of Refugees, Freedmen and Abandoned Lands will be discontinued from and after June 30, 1872, and, after that date, all business relating in any way to the said bureau—exclusive of the Freedmen's Hospital and Asylum at Washington—with all the accounts and claims connected therewith, of whatever character or date, or whensoever incurred, will be conducted through the Adjutant-General of the Army, to whom all the records, checks, and Treasury certificates (received under section 1 of the act of March 29, 1867), or the amounts received therefrom, and all other funds, papers, and property, will be delivered by the 1st of July proximo, at such place as the Adjutant-General may designate.

II. After June 30, 1872, all business relating in any way to the "Freedmen's Hospital and Asylum at Washington, D. C.," with all the accounts connected therewith, of whatever character or date, will be conducted through the Surgeon-General of the Army, to whom all the records, papers, funds, and property will be turned over by the first of July proximo.

III. The Adjutant-General and Surgeon-General will arrange, promptly, for the execution of this order, and after the transfer, submit for the action of the Secretary of War such regulations as may be necessary for the future transaction of the business.

Agents, clerks, and other employés, whose services may not be required by the Adjutant-General and Surgeon-General in effecting the transfer, will be discharged June 30; all others as soon as the transfer shall have been completed.

IV. The following are the portions of the act of Congress under which the foregoing is ordered:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, eighteen hundred and seventy-three, viz:

* * * * * * *

For collection and payment of bounty, prize-money, and other legitimate claims of colored soldiers and sailors, viz: For salaries of agents and clerks; rent of offices, fuel, and lights; stationery and printing; office furniture and repairs; mileage and transportation of officers and agents; telegraphing and postage, one hundred thousand dollars: *Provided*, That the Bureau of Refugees, Freedmen and Abandoned Lands shall be discontinued from and after June thirtieth, eighteen hundred and seventy-two, and that all agents, clerks, and other employés then on duty shall be discharged, except such as may be retained by the Secretary of War for the purposes of this proviso; and all acts and parts of acts pertaining to the collection and payment of bounties or other moneys due to colored soldiers, sailors, and marines, or their heirs, shall remain in force until otherwise ordered by Congress, the same to be carried into effect by the Secretary of War, who may employ such clerical force as may be necessary for the purpose.

For the support of Freedmen's Hospital and Asylum at Washington, District of Columbia, viz: Pay of medical officers and attendants; medicines, medical supplies, and rations; clothing; *rent* of hospital buildings, fuel, and lights; repairs and transporta-

tion, seventy-four thousand dollars: *Provided*, That no part of said appropriation shall be used in the support of, or to pay any of the aforesaid expenses on account of any persons hereafter to be admitted to said hospital and asylum, unless persons removed thither from *some other government hospital: Provided*, That after June thirtieth, eighteen hundred and seventy-two, the Freedmen's Hospital in the District of Columbia shall, until otherwise ordered by Congress, be continued under the supervision and control of the Secretary of War, who shall make all estimates, and pass all accounts, and be accountable to the Treasury of the United States for all expenditures.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

[General Orders No. 79.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, August 8, 1872.

Pursuant to the provisions of the act of Congress approved June 10, 1872, promulgated in War Department General Orders No. 55, of 1872, and under the transfer, directed by that order, of the business of the late Bureau of Refugees, Freedmen and Abandoned Lands, exclusive of the Freedmen's Hospital and Asylum at Washington, to the Adjutant-General, the following regulations are promulgated "*for the discovery, identification, and payment of the claimants,*" * * * "*pay, bounty, prize-money, or other moneys due to colored soldiers, sailors, or marines, or their legal representatives, now residing, or who may have resided, in any State in which slavery existed in the year eighteen hundred and sixty.*"

I. A chief disbursing-office will be established in the Adjutant-General's Office at Washington, D. C., with disbursing-offices at—

Louisville, Ky.
Saint Louis, Mo.
Nashville and Memphis, Tenn.
Vicksburg and Natchez, Miss.
New Orleans, La.

Payments to claimants in Delaware, Maryland, and Virginia will be made through the Washington office; in North Carolina, South Carolina, Georgia, and Florida, and States wherein slavery did *not* exist, by officers who will be temporarily assigned to that duty; and in all other States, through the disbursing-offices hereinbefore enumerated.

II. The payments, &c., will be governed by the following requirements of the resolution (public No. 25), "in reference to the collection and payment of moneys due colored soldiers, sailors, and marines, or their heirs," approved March 29, 1867. (War Department General Orders No. 53, 1867.)

1. The agent or attorney, in all cases, will be paid "*his lawful fees and expenses*" through the Washington office. After such payments the "*balance*" due the claimants will be held subject to order, on satisfactory identification.

2. No "*balance*" shall be paid to any person except the claimant, or, if deceased, his or her legal representative.

3. No "power of attorney, transfer, or assignment" of the "*balance,*" or any part thereof, will be recognized or allowed.

4. When the claimant shall have been properly identified, the "*balance*" due shall be *paid in current funds*, and not in checks or drafts.

5. The Adjutant-General, his assistants, and the disbursing-officers will facilitate, as far as possible, the discovery, identification, and payment of the claimants."

6. Besides the "affidavits of two credible witnesses that he is the identical person" (see sec. 2, act July 26, 1866, War Department General Orders No. 62, of 1866), the claimant will be subject, under information to be supplied by the Adjutant-General, to a special examination as to his identity.

7. "In settling with the agent or attorney of the claimant, strict compliance with the scale of fees prescribed by the second section of the joint resolution approved June 26, 1866 (War Department General Orders No. 62, of 1866, page 4), entitled 'Joint resolution amendatory of a joint resolution respecting bounties to colored soldiers, and the pensions, bounties, and allowances to their heirs,' approved June 15, 1866, will in every case be required and enforced."

The said scale is as follows:

"For the preparation and prosecution of claims for * * * all sums not exceeding fifty dollars, the sum of five dollars; for all sums exceeding fifty and less than one hundred dollars, the sum of seven dollars and fifty cents; and for all sums exceeding one hundred dollars, the sum of ten dollars. And said fees shall include all expenses incident to the collection of said claims, except the expenses of the necessary affidavits and notarial or other acknowledgments, which shall be defrayed by the claimant."

And the same law further directs that "any agent or attorney who shall cha-ge,

directly or indirectly, in any case, a greater sum for his services in preparing and prosecuting said claims * * shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding three thousand dollars nor less than one thousand dollars, and shall be forever excluded from prosecuting military or naval claims against the government."

8. *Advances* or *loans*, so called, by an attorney or agent will not be recognized.

9. All money held for disbursed by disbursing-officers shall be held and disbursed under the same rules and regulations governing other disbursing-officers of the Army.

III. The chief disbursing-officer shall receive all checks and Treasury certificates issued, in the settlement of claims, under the aforesaid joint resolution approved March 29, 1867, and collect from the Pay Department of the Army the amounts called for thereby, keeping a full, clear, and permanent record of the same.

He shall arrange and classify the checks and certificates so collected, in order to determine the office, or offices, through which payments are to be made to the claimants, preparing full and complete lists, with all necessary information, the same to be transmitted, with his check for the amount thereof, to the proper disbursing-officer.

IV. The disbursing-officers shall keep complete records, under a form to be prescribed by the Adjutant-General, of all moneys received by them and of all payments made.

Immediately upon the receipt of the lists and checks referred to in paragraph III, they shall arrange for prompt payments to the claimants, first notifying each, by letter, when and where to appear, with the means necessary to identification.

V. The Adjutant-General will prescribe the necessary forms, and call for such lists, returns, &c., as, over and above the accounts and returns falling under the rules and regulations governing disbursing-officers, may be necessary to a specific knowledge, at all times, of the entire business.

By order of the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

Official:

[Senate Ex. Doc. No. 46, 44th Congress, 1st session.]

Letter from the Secretary of War, communicating information in relation to the bill (S. 637) to provide for the payment of bounties, &c., to colored soldiers and their heirs.

WAR DEPARTMENT,
April 6, 1876.

The Secretary of War has the honor to transmit to the United States Senate, for the information of the Committee on Military Affairs, report of Major Thomas M. Vincent, Assistant Adjutant-General, on Senate bill 637, "to provide for the payment of bounties, &c., to colored soldiers and their heirs."

ALPHONSO TAFT,
Secretary of War.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
March 29, 1876.

Relative to Senate bill No. 637, 44th Congress, 1st session, entitled "A bill to provide for the payment of bounties, &c., to colored soldiers and sailors and their heirs," I have the honor to submit the following:

Section 1 of said bill provides that from and after the passage thereof all payments to colored soldiers shall be paid through the same officers as now have charge of similar payments to white soldiers.

Section 2, however, provides that checks or drafts issued in payment of any sum or sums found due to the beneficiaries, shall not be disposed of as in the case of white soldiers, but shall be sent in the *care* of the postmaster of the county-seat of the county in which said beneficiary resides, and places upon the said postmaster the responsibility of identification before the delivery of the check or draft, or, in other words, of the envelope supposed to contain a check or draft in payment of bounty or other moneys due to the person addressed.

Section 3 does not, in fact, change existing laws.

Section 4 directs that the provisions of the act be carried out within thirty days from the passage thereof, and

Section 5 repeals all acts, &c., inconsistent.

The only law now in existence regulating the delivery of checks or drafts issued in payment of claims of white soldiers for bounty, &c., is the act of April 10, 1869 (16 Stat., pp. 54 and 55). Said act practically places the claims of white soldiers on the same basis as of claims of colored soldiers, save that it permits the payment in the

case of white soldiers to be made by check or draft, to be sent direct to claimant, or through the agents charged by law with payment to colored soldiers, or State and pension agents, or governors of national asylums.

The laws and regulations governing the payment of claims of colored soldiers, which it is proposed by Senate bill No. 637 to set aside, were the result of *actual experience*, and deemed necessary for the protection not only of the public interests, but of the interests of the claimants, who, from lack of education and ordinary business habits, were exposed to the wiles of claim-agents and others who, in many instances by organized combinations, resorted to all possible expedients to defraud them of their dues.

The effective manner in which the system worked resulted in the passage of the act of April 10, 1869, above mentioned, which, in part, extended the system to the protection of white soldiers.

The subject-matter of the proposed legislation received due consideration while a bill for the abolishment of the Bureau of Refugees, &c., was pending in the Forty-second Congress, and the views of the Second Auditor of the Treasury, as set forth in his letter of April 24, 1872, of which the following is a copy, were then elicited:

"TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
"*April* 24, 1872.

"SIR: Your letter of the 12th instant, stating that a bill (H. R. 1359) providing for the abolishment of the Freedmen's Bureau, and for continuing in force all acts pertaining to the collection and payment of bounties, &c., due colored soldiers or their heirs, to be carried into effect by the Secretary of War, had been referred to your department by the Committee on Freedmen's Affairs, and inviting suggestions upon the expediency of transferring that portion of the Freedmen's Bureau to this office, has been received.

"In reply, I have the honor to state that from the examination and settlement of the claims of colored soldiers or their heirs, I have long since been convinced of the utility and necessity of some such a system as that organized by the Freedmen's Bureau. Since the commencement of the settlement of claims under the joint operation of the Freedmen's Bureau and this office, there have been adjusted over seventy thousand claims, and about fifteen millions of dollars disbursed. There have been rejected, for different causes, about twenty thousand cases, many of which, however, may be revived and settled, leaving at present on the files awaiting initial or final action about thirteen thousand claims, which will involve a disbursement of not less than two millions of dollars. The difficulty of reaching, by mail, persons generally so illiterate and obscure, seldom resident near a post-office, and so little likely to be known to a postmaster; the chaotic character of the social and domestic relations of the colored race while in a state of slavery, which renders it often an extremely difficult and delicate matter to decide between several contesting parties; the irregularities permitted in respect to marriage; the long separation of near relatives in many cases, and the general credulity with which the race is apt to listen to the proposals of a *sharper*, render it almost impossible to attempt to settle this class of claims without far greater precaution and checks than are required in the case of white soldiers.

"It has been the uniform experience of the office that for the prevention and detection of fraud, the proper identification of claimants and their protection, not only against the chicanery of unscrupulous parties, but their own ignorance, there is needed some kind of an organization that can deal directly with the claimants themselves. This is impossible for the officials of the Treasury to do in their capacity as accounting-officers, from the technical limitation and definition of their duties by statute, the lack of any appropriation from which to pay the agents who must be employed on such service, the absence of any authorized mode of extending such agencies over a large extent of country, and the nature of the service itself, which appears to be foreign to the purposes for which an accounting-bureau is created.

"From the fact that numerous attempts at fraud have been prevented before fruition, and that committed frauds have in many instances been detected, and dishonest parties brought to punishment, through the co-operation of the bureau, it is shown that a well-organized system for investigations of this kind, be it attached to what department of the government it may, is absolutely necessary, and in fact it has been found that such investigations are more likely to be uninfluenced by local considerations than when made by persons constantly resident at the place of investigation; and in the absence of the bureau as it was, no branch of the government appears, by its centralization of power, the number and wide distribution of its officials, their general intelligence and fidelity, and their immediate responsibility to headquarters, so well fitted for a work of this kind as the one indicated in the bill.

"I therefore earnestly express the belief that the true interests of both claimants and the government require that the investigation with reference to the settlement and payment of such claims shall be made by the War Department.

"Very respectfully, your obedient servant,

"E. B. FRENCH,
"*Auditor.*

"To the SECRETARY OF WAR."

No stronger attestation of the expediency of continuing in force the existing methods of payment than is furnished in the letter of the Auditor could be given; and as an officer charged by law with the adjustment of such claims, and of the accounts pertaining thereto, his knowledge and experience are necessarily such as to entitle his views to careful consideration.

That they receive such consideration is well known; and Congress, by act of June 10, 1872, which abolished the Bureau of Refugees, &c., provided that "all acts and parts of acts pertaining to the collection and payment of bounties, or other moneys due to colored soldiers, sailors, and marines, or their heirs, shall remain in force until otherwise ordered by Congress, the same to be carried into effect by the Secretary of War."

From the fact that so long a time had elapsed since the rendition of the service and the passage of the laws granting bounties, &c., and that the discovery and identification of the claimants had thereby become the more difficult, it was deemed especially important to devise a most careful and complete system in order to secure protection to the interests involved, and especially enforce the exercise of the utmost caution in regard to the identification of claimants. A rigid system, with the attainment of those ends in view, was accordingly prescribed, and such orders as were necessary to give force and effect thereto were promptly promulgated.

That such system has had the desired effect in protecting the interests both of the government and of claimants has been amply demonstrated by the workings thereunder.

No one unfamiliar with the work of paying these bounties, &c., can form an intelligent idea of its character nor of the constant watchfulness and zeal that are necessary to properly guard the interests involved. Notwithstanding the safeguards which law and stringent regulations have provided, it is found requisite to exert constant care and effort to prevent the successful perpetration of fraud by a class who make the claims of soldiers an especial subject of fraudulent transactions.

As an illustration of the extent to which such practices are indulged, it is deemed proper to refer to the fact that, in order to guard against the consummation of fraud by claim-agents and others at Vicksburg, Miss., whose operations had become bold and extensive, it became necessary to discontinue the office which had been located at that point for the payment of claims, and to adopt measures whereby payment to the claimants might be effected without the knowledge of the claim-agents and others referred to. This course had the effect of checking their operations, and they have, as a matter of course, been greatly dissatisfied, and exerted their influence, and employed falsehood and misrepresentation, to endeavor to effect the re-establishment of the Vicksburg office.

The wisdom of the change has been made abundantly manifest, and so effectually has it operated against the combinations of those who had anticipated a successful career of fraud and imposition, that, in November last, while a disbursing-officer was at Vicksburg effecting payment to claimants in accordance with the regulations adopted on the removal of the permanent officer from that point, he received information from reliable citizens that he was to be attacked and robbed, which would doubtless have been the case had he not availed himself of a military guard furnished to him by the commander of the post.

That the persons against whose fraudulent designs the present system of payments so successfully operates desire a change of system there can be no doubt, nor is it doubted that the proposed measure to repeal existing laws affecting such payments has its origin with that class.

The proposed change contemplates devolving upon postmasters a labor which, added to their regular duties, would tend toward their complication and embarrassment, and cause much public inconvenience. It intrusts them with a responsible duty for which they are under no legal accountability, and which, from lack of experience, they could not possibly perform in such manner as its nature demands. The proper identification of claimants, as hereinbefore indicated, is a subject of exceeding importance, and one which demands the strictest possible attention. Under the present system the local disbursing-officers are furnished, for their confidential information, with an extract from the official records containing data connected with the military history of each soldier in whose case funds are sent out for payment. Such data comprise a personal description of the soldier, including any marks, scars, &c., that he may have, and from these data, in connection with such information as may be gained from the soldier in answer to inquiries based upon his military record, the question of identity can be readily determined. By these means it has been shown, in very numerous instances, that persons had obtained settlement of claims upon fraudulent applications, and have presented to the disbursing officers such evidence of their identity as would have led to their payment under any ordinary system. But, by the peculiar advantages afforded by means of the confidential data, the frauds have been discovered, and the amounts involved have been thereby saved to the govern-

ment. This data is viewed as strictly confidential, and a proper regard for the public interests would not admit of its being placed in the possession of persons other than those connected with, and directly under the control of, this department.

Under any system of payment by checks or drafts, the claimants would realize but a small proportion of their dues, and for this reason the law which requires them to be paid in *currency* was enacted. The experience of this office has shown that the larger proportion of them are unable to count money or to distinguish between bills of different denomination, and such are therefore paid, as a rule, in bills of small denomination, and are given such instructions in regard to their value as will enable them to protect themselves from imposition. If they were paid by check or draft, their ignorance would be taken advantage of by dishonest persons, who, under the pretense of rendering a friendly service in obtaining its conversion into currency, would probably defraud them of the greater portion of the proceeds.

From my knowledge of the entire subject, gained from the experience of this office in conducting the payment of bounties, I cannot but regard the proposed law as one fraught with grave danger to the public interests, while the interests of the claimants, under its operations, would have but little, if any, protection. It would remove the existing safeguards which now effectually prevent the perpetration of fraud, and enable claim-agents to fabricate thousands of claims against the government in cases of soldiers who have never applied for bounty, and who are doubtless dead; and in this manner frauds upon the government involving hundreds of thousands of dollars could be consummated. That numerous claim-agents are possessed of data by which such fraud could be effected, is a fact well known; and instead, therefore, of the enactment of laws whereby the liabilities to fraud would become increased, it would be infinitely better, in my judgment, that the existing laws now affecting the payment of colored soldiers be continued in force, and that white soldiers also be brought within their wise provisions.

THOMAS M. VINCENT,
Assistant Adjutant-General.

To the ADJUTANT-GENERAL OF THE ARMY.

[Indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
April 1, 1876.

Respectfully submitted to the Secretary of War, recommending transmittal to the Senate of the United States, for the Committee on Military Affairs, if approved by him.

E. D. TOWNSEND,
Adjutant-General.

[General orders No. 120.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, December 22, 1877.

The following extracts of an act of Congress are published for the information and government of all concerned:

An act to provide for deficiencies in the appropriations for the service of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for prior years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated out of any money in the Treasury not otherwise appropriated, except as differently specified, for the objects hereinafter expressed, namely:

* * * * * * *

WAR DEPARTMENT.

COLLECTION AND PAYMENT OF BOUNTY, PRIZE-MONEY, AND OTHER CLAIMS OF COLORED SOLDIERS AND SAILORS.—For salaries of agents and clerks; rent of office, fuel, lights, stationery, and similar necessaries; office furniture and repairs; mileage and transportation of officers and agents; telegraphing and postage, being a deficiency for the service of the fiscal year eighteen hundred and seventy-eight, twenty thousand dollars; which is appropriated to close up and finish the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors; and if the work of collecting and paying said bounty and other claims shall not be finished before

January first, eighteen hundred and seventy-nine, said bureau shall be closed, and all papers connected therewith shall be turned over to the department having charge of the payment of bounties due to white soldiers.

That the Secretary of War is authorized to rent offices required for the construction of the State, War and Navy Department building, and public buildings and grounds, at an aggregate rental not to exceed two thousand one hundred dollars per annum, until such offices can be supplied in buildings belonging to the government; and to pay for the rent of the building now occupied for said offices, from the first day of May, eighteen hundred and seventy-seven, out of any existing appropriations for the State, War and Navy Department building, or public buildings and grounds.

* * * * * * *

MISCELLANEOUS.

State, War and Navy Department building: For continuation of the east wing of the building, one hundred and seventy-five thousand dollars; and for continuation of the north wing of the building, one hundred and fifty thousand dollars; in all, three hundred and twenty-five thousand dollars.

* * * * * * *

To pay John W. Dodd and John McKinny for work and labor and materials furnished in grading and paving the sidewalk and gutters on Michigan street, in front of the arsenal grounds, in the city of Indianapolis, Ind., six thousand and four dollars and forty-eight cents.

* * * * * * *

Approved, December 15, 1877.

By command of General Sherman:

E. D. TOWNSEND,
Adjutant-General.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 58.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

A copy of a letter from the Quartermaster-General relative to the appropriation for the service of his office, as made by House bill 4104.

APRIL 5, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 4, 1878.

The Secretary of War has the honor to transmit to the United States Senate a copy of a letter from the Quartermaster-General relative to the appropriation for the service of his office, as made by House bill 4104, "making appropriations for the legislative, executive, and judicial expenses of the government for the year ending June 30th, 1879, and for other purposes."

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 30, 1878.

SIR: The legislative, executive, and judicial appropriation bill, as read and printed in the House of Representatives, 26th March, 1878, does not appropriate money enough to pay the full salaries allowed by law to all the clerks and others employed in this office.

The bill makes some increase in the force of clerks, which will be advantageous to the business of the office; but it makes no provision for a messenger allowed by existing law, and appropriates for assistant messengers and for one page.

The experience of this office is that pages are not to be trusted with its work.

The chief messenger of this office, George Phelps, has been in service very many years. He is honest and faithful, and I should very much regret to see him discharged or his pay reduced after so long and faithful service.

I hope the committee will continue the provision for one messenger, which by law is $840 a year, and strike out that for one page at $480.

The appropriation for rent of this building is also less than the lease requires. The building is leased at $1,000 per month.

For current and ordinary repairs of injuries and wear and tear to this building, which is a large one, I estimated the sum of $500. It is very desirable that this be granted.

The salaries or pay of all clerks, messengers, assistant messengers, watchmen, and laborers in this department are fixed by law (Revised Statutes, sec. 167). The money granted in this bill will not be sufficient to pay the persons whose employment the law allows, the sums which the law declares they shall be entitled to receive.

The question then will arise whether to discharge a portion or retain on the rolls all that are needed; to pay them so long as the money holds out and to go to Congress at the next session with deficiency estimates.

It is desirable that the will of Congress on this subject be distinctly declared.

I am, very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster-General, Brevet Major-General U. S. A.

To the honorable the SECRETARY OF WAR.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 59.

LETTER

FROM

THE SECRETARY OF THE NAVY,

COMMUNICATING,

In answer to a Senate resolution of February 18, 1878, *information in relation to lands belonging to the United States in the State of Florida reserved for naval purposes.*

APRIL 9, 1878.—Referred to the Committee on Naval Affairs and ordered to be printed (without diagrams).

NAVY DEPARTMENT,
Washington, April 8, 1878.

SIR: I have the honor to acknowledge the receipt of the resolution of the United States Senate, dated February 18, 1878, "That the Secretary of the Navy be, and he hereby is, instructed to report to the Senate the extent and condition of the lands of the United States in the State of Florida reserved for naval purposes, or for the timber thereon for the use of the Navy," and in answer thereto to transmit herewith diagrams, which have been prepared at the General Land Office, Washington, of the lands so reserved.

The department has not the information to enable it to say what is the condition of these lands or the timber thereon.

I have the honor to be, sir, very respectfully, your obedient servant,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States
and President of the United States Senate.

O

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 60.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

A letter from the Commissary-General of Subsistence, urging an appropriation for the clerical force in his office, as recommended in his annual report for 1877.

APRIL 9, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 8, 1878.

The Secretary of War has the honor to transmit to the United States Senate, for the consideration of the Committee on Appropriations, a letter from the Commissary-General of Subsistence, dated the 28th ultimo, urging that the clerical force recommended in his annual report for 1877 be provided for by an appropriation.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *United States Senate.*

WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL OF SUBSISTENCE,
Washington, D. C., March 28, 1878.

SIR: I have the honor to invite your attention to the statements and recommendations in relation to bureau clerks contained in my annual report for 1877 (pages 14 and 15), a copy of which is herewith inclosed; and to request that the especial attention of the Committee on Appropriations of the House of Representatives be invited thereto.

With the clerical force now employed (the same as stated in the portion of my annual report above referred to), the business of this office is falling behind, notably in the examination of claims, and particularly those of soldiers while prisoners of war, presented under the joint resolution of July 25, 1866 (14 Statutes at Large, 364), and section 3 of the act of March 2, 1867 (14 Statutes at Large, 422).

Delay in the examination of claims of prisoners of war is a hardship to an especially meritorious and generally needy class of claimants, and to do justice to this and other classes of claimants, and generally to

conduct the business of my office properly and promptly, I earnestly request that the clerical force recommended in my annual report be provided for by appropriation.

Very respectfully, your obedient servant,

R. MACFEELY,
Commissary-General Subsistence.

To the Hon. SECRETARY OF WAR.

[Extract from the Report of the Commissary-General of Subsistence for 1877.]

BUREAU CLERKS.

In the estimate for appropriation for the clerical force for the office of the Commissary-General, for the fiscal year ending June 30, 1879, I have estimated for 1 chief clerk, 2 clerks of class 4, 4 of class 3, 5 of class 2, 13 of class 1, 1 messenger, 3 laborers, and 2 watchmen. The clerical force is the same that has been estimated for since 1873, with the addition of 1 clerk of class 1, experience having shown that the business of the office cannot be properly conducted with the number heretofore estimated for, while this office is charged with the examination of war-claims.

This number of clerks is the same as now employed in this office, but five of those employed are (enlisted men) on duty in this bureau by special assignment of the Secretary of War, and the sixth is a messenger in the War Department, detailed for duty as a clerk in this bureau.

I am of the opinion that no enlisted men should be employed in this office by detail from the War Department or bureaus thereof or elsewhere, unless in case of emergency, but that the number necessary should be appropriated for. Certainly if this should be done the duties of the office would be better performed and the exact cost of the force employed be known and charged against the proper appropriation.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 61.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of March 27, 1878, information in relation to the time when the government took possession of the Atlantic and North Carolina Railroad, the length of time it had possession of it, the rates of fares and freights established, amount received on account thereof, &c.

APRIL 11, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, April 10, 1878.

The Secretary of War has the honor to transmit to the United States Senate a report of the Quartermaster-General, dated the 6th instant, giving certain information in regard to the Atlantic and North Carolina Railroad, called for by Senate resolution of March 27, 1878.

GEO. W. MCCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, April 6, 1878.

SIR: In reply to the following Senate resolution of March 27, 1878, to wit—

Resolved, That the Secretary of War communicate to the Senate all such information as may be in the War Office in relation to when the government took possession of the Atlantic and North Carolina Railroad; how long the government had possession of the same; what rates of fares and freight it established; and what were the gross receipts of money received on account of freights and fares from the 1st day of May, A. D. 1865—

I have the honor to report that from papers on file in this office it appears that that portion of the Atlantic and North Carolina Railroad between Morehead City and New Berne, N. C., 36 miles, was taken possession of soon after the capture of New Berne, on March 14, 1862—the exact date I cannot give. In January, 1865, the road was in operation to Batchelor's Creek, 44 miles from Morehead City, and on March 25, 1865, it was opened to Goldsborough, 95 miles. The road remained in

the possession of and under the control of the government, with the exception of a few days on two occasions, when it was broken by rebel raids between Morehead City and New Berne, to October 25, 1865, when it was restored to the company.

Prior to March, 1865, the road was operated by direction of the department commanders, and after that date under the direction of General D. C. McCallum, director and general manager United States military railroads. I have not been furnished with a statement of rates of fares and freights, established by the officers in charge of the railroad, and cannot, therefore, furnish the information on that point called for by the resolution.

After the occupation of North Carolina by the forces under General W. T. Sherman in 1865, in addition to the Atlantic and North Carolina Railroad, the North Carolina Railroad, between Goldsborough and Hillsborough, 88 miles; the Wilmington and Weldon Railroad, between Wilmington and Goldsborough, 85 miles, and the Raleigh and Gaston Railroad, between Raleigh and Cedar Creek, 25 miles, were repaired and put in operation. The Raleigh and Gaston Railroad was restored to the company on May 3, 1865, but the other roads continued in the possession of the government, and were operated conjointly. The reports of receipts from transportation show the aggregate received from all the roads, and do not specify the amount received from any one road, hence it is not possible to state the amount received from the Atlantic and North Carolina Railroad alone.

The Senate resolution is herewith returned.

I am, very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster-General, Brevet Major-General, U. S. Army.

The honorable the SECRETARY OF WAR.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 62.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A communication from the General of the Army, recommending the amendment of section 1216 *and the modification of section* 1285 *of the Revised Statutes, so as to entitle the holders of certificates of merit to the additional pay of* $2 *per month while in the military service.*

APRIL 15, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 12, 1878.

The Secretary of War has the honor to transmit to the United States Senate a letter from the General of the Army, and recommend that section 1216, Revised Statutes, be so amended as to include all enlisted men in its provisions; and also to recommend that section 1285, Revised Statutes, be so modified as to entitle the holder of a certificate of merit to the additional pay of $2 per month while in the military service, whether such service shall have been continuous or not.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT
of the United States Senate.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, April 8, 1878.

SIR: I have the honor to recommend that section 1216, Revised Statutes, be so amended as to include in its provisions all *enlisted* men. As I construe it, it only applies to private soldiers, while there are many non-commissioned officers, musicians, &c., who have distinguished themselves in the service, but who, from want of education, from advanced age, or other circumstances, are not qualified for a commission, but who would feel honored and complimented to receive the "certificate of merit."

The law, however, only authorizes these certificates to be given to *privates*, and the consequence is that many non-commissioned officers receive no reward *at all*, although their claims may be as strong, if not stronger, than those of others who will receive certificates of merit; and

their rank, which is only a partial reward for services and good conduct, operates as a bar to their receiving this honor and emoluments.

It is also respectfully recommended that section 1285, Revised Statutes, be modified to read as follows: A certificate of merit granted to an enlisted man by the President for distinguished services shall entitle him thereafter to additional pay, at the rate of two dollars per month, while he is in the military service, although such service may not be continuous.

I have the honor to be, sir, very respectfully, your obedient servant,

W. T. SHERMAN,
General.

To the honorable the SECRETARY OF WAR.

O

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 63.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

A tabular statement of campaigns, expeditions, and scouts in the Department of Dakota in the third quarter of 1877.

APRIL 15, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, April 13, 1878.

The Secretary of War has the honor to transmit to the United States Senate a tabular statement of campaigns, expeditions, and scouts made in the Department of Dakota during the third quarter of the year 1877.

The commanding general Military Division of the Missouri (General Sheridan) asks that this statement be submitted to Congress, as showing "in a condensed form a portion of the hard labor that the troops in this division are constantly engaged in."

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *United States Senate.*

Tabular statement of campaigns, expeditions, and scouts in

Posts from which parties were sent out.	Commanding officers of forces sent out.	Troops composing command.	Strength.				Date of—	
			Officers.	Men.	Indians.	Citizens.	Departure.	Return.
Independent posts.							1877.	
Fort Snelling, Minn	Capt. J. C. Bates, 20th Inf.	Company B, 20th Inf.	3	26	....	....	Sept. 26	Still absent.
Fort Totten, Dak..	Capt. Henry Jackson, 7th Cav.	Company C, 7th Cav.	3	61	....	....	Aug. 14	....do.....
Middle district.								
Standing Rock agency, Dak.	Capt. Kinzie Bates, 1st Inf.	Companies G and K, 1st Inf.	4	87	....	....	Apr. 30	....do.....
Do.....	Capt. Joseph Conrad, 11th Inf.	Companies A, B, and H, 11th Inf.	8	106	....	....	Apr. 30	....do.....
Fort Rice, Dak.....	Lieut.-Col. Elmer Otis, 7th Cav.	Companies A, D, H, and M, 7th Cav.	12	310	....	....	Apr. 19	....do.....
Fort Abraham Lincoln, Dak.....	Col. S. D. Sturgis, 7th Cav.	Companies A, B, D, E, F, G, H, I, K, L, and M, 7th Cav.	32	779	12	....	May 1	....do.....
	Maj. H. M. Lazelle, 1st Inf.	Companies B, G, H, and K, 1st Inf.	8	172	....	....	May 1	....do.....
	Lieut.-Col. G. P. Buell, 11th Inf.	Companies A, B, C, F, G, and H, 11th Inf.	14	247	10	....	May 1	....do.....
Southern district.								
Cheyenne agency, Dak.	Lieut.-Col. G. P. Buell, 11th Inf.	Companies C, F, and G, 11th Inf.	6	141	10	....	Apr. 23	....do.....
Fort Sully, Dak...	Maj. H. M. Lazelle, 1st Inf.	Companies B and H, 1st Inf.	4	85	....	....	Apr. 24	....do.....
Do.....	2d Lieut. J. G. Gates, 20th Inf.	Detachment 1st and 20th Inf.	1	20	1	....	Sept. 22	....do.....

the Department of Dakota in the third quarter of 1877.

Country passed through.	Distance traveled (miles.)	Tribes operated against.	Results.														Remarks.
			Indians killed.	Indians wounded.	Prisoners.			Property captured.	Property destroyed.	Our loss.							
										Killed.				Wounded.			
					Men.	Women.	Children.			Officers.	Men.	Indians.	Citizens.	Officers.	Men.	Indians.	Citizens.
Minn....	Unk'n.	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To White Earth Indian agency, Minn., to preserve peace and order on reservation.
Dak.....	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To southwestern portion of stage-road between Bismarck and Black Hills, to afford protection to travel on said road.
..do	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Fort Lincoln, prepared for field service, and to report at that point to Maj. H. M. Lazelle, 1st Infantry. (See Fort Abraham Lincoln.)
..do	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Fort A. Lincoln, prepared for field service, and to report at that point to Lieut. Col. George P. Buell, 11th Infantry. (See Fort Abraham Lincoln.)
..do	.do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Fort A. Lincoln, prepared for field service, and to report at that point to Col. S. D. Sturgis, 7th Cavalry. In July Lieutenant-Colonel Otis was relieved from duty with this command and returned to Fort Rice. (See Fort Abraham Lincoln.)
Dak. and Mont.	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To cantonment on Tongue River to form part of command of Col. N. A. Miles, 5th Infantry, in operations against hostile Indians.
..do	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Do.
..do	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Lieutenant-Colonel Buell with four companies to proceed and begin construction of buildings for post on Little Big Horn River, and Major Bartlett with two companies to report to Col. N. A. Miles, 5th Infantry, at cantonment, on Tongue River, for service against hostile Indians. In July Major Bartlett was relieved from duty with this command and directed to proceed to Cheyenne agency, and the two companies under him were sent for duty at the Big Horn post.
..do	..do ...	Sioux	..	..	:	..	..	..	..	..	..	..	..	..	..	..	..	To Fort A. Lincoln, prepared for field service, and to receive further orders at that point. (See Fort Abraham Lincoln.)
.....	..do ...	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Do.
Dak.....	..do ...	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Rapid City, in the Black Hills, assisting United States marshal to conduct Indians to that point for trial.

Tabular statement of companies, expeditions, and

Posts from which parties were sent out.	Commanding officers of forces sent out.	Troops composing command.	Strength.				Date of—	
			Officers.	Men.	Indians.	Citizens.	Departure.	Return.
District of the Yellowstone.							1877.	
Cantonm't Tongue River.	Capt. S. Snyder, 5th Inf.	Detachment 5th Inf.	6	131	....	....	May 17	July 20, 1877
Do.....	Capt. C. J. Dickey, 22d Inf.	Company E, 22d Inf.	1	45	....	....	June 3	.....
Do.....	Maj. H. M. Lazelle, 1st Inf.	Three companies 1st Inf., five companies 22d Inf., and Company B, 7th Cav.	24	472	....	....	June 16	Sept. 1, 1877
Do.....	Maj. J. S. Brisbin, 2d Cav.	Detachments 1st Inf. and 2d Cav.	16	316	95	16	July 4	Sept. 1, 1877
Do.....	Col. N. A. Miles, 5th Inf.	Detachments 7th Cav. and 5th Inf.	37	784	25	88	July 4	July 16, 1877
Do.....	1st Lieut. G. C. Doane, 2d Cav.	Company E, 7th Cav.	2	53	350	5	Aug. 3	Still absent.
Do.....	Col. S. D. Sturgis, 7th Cav.	Companies F, G, H, I, L, and M, 7th Cav.	15	360	*	58	Aug. 12	....do .....
Do.....	Col. N. A. Miles, 5th Inf.	Detachments 2d and 7th Cav. and 5th Inf.	20	410	30	120	Sept. 17	....do .....

* Unknown.

† One horse, one gun.

scouts in the Department of Dakota, &c.—Continued.

Country passed through.	Distance traveled (miles).	Tribes operated against.	Results.													Remarks.
			Indians killed.	Indians wounded.	Prisoners.			Property captured.	Property destroyed.	Our loss.						
										Killed.				Wounded.		
					Men.	Women.	Children.			Officers.	Men.	Indians.	Citizens.	Officers.	Men.	Indians.	Citizens.	
Mont ...	Unk'n.	Sioux.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Scouting country around cantonment from camp near that point. No engagement with Indians.
Mont. & Dak.	..do ...	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Scouting against hostile Indians. Made camp at Cedar Creek. Joined command under Maj. H. M. Lazelle, 1st Infantry, June 16, 1877, and remained with it till July 11, 1877, when the company was, with the other companies, 22d Infantry, placed *en route* for Fort Lincoln, to be thence forwarded to their stations in the Military Division of the Atlantic. No engagement with Indians.
..do	1014	....do	1	..	..	..	..	†	..	..	..	..	..	..	..	..	..	Scouting the Powder River and Little Missouri country and examining for wagon-road to the Black Hills. Was joined by Company E, 22d Infantry, June 16, 1877. The six companies 22d Infantry were relieved from this service and placed *en route* for Fort A. Lincoln, to be thence forwarded to their stations in the Military Division of the Atlantic. For portion of the time this detachment was out it operated in conjunction with one under command of Major Brisbin, 2d Cavalry. No engagement with Indians.
..do	600	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Scouting against hostile Indians. No engagement.
Mont ...	110	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Scout to headwaters Cedar Creek. No Indians encountered.
..do	Unk'n.	Nez Percés	*	*	..	..	..	*	..	..	..	..	..	..	..	..	..	Scout to Judith Basin to intercept Nez Percés. Operated in conjunction with other commands engaged in pursuit of Nez Percés.
..do	..do ...	....do	*	*	..	..	..	‡	..	..	3	..	..	1	10	..	..	Scout to Judith Basin and Clark's Fork to intercept hostile Nez Percés, and had an engagement with those Indians at Cañon Creek, Mont., September 13, 1877. Operating in conjunction with other commands.
Dak. and Mont.	.....	....do	37	45	..	..	..	§	..	2	22	..	..	4	38	2	..	Scout to mouth of Squaw Creek, thence northeast to Little Rocky and Bear's Paw Mountains to intercept Nez Percés. September 30, engaged the Indians at Bear's Paw Mountain and surrounded their camp.

‡ About 900 ponies.

§ Herd of ponies.

Tabular statement of companies, expeditions, and

Posts from which parties were sent out.	Commanding officers of forces sent out.	Troops comprising command.	Strength.				Date of—	
			Officers.	Men.	Indians.	Citizens.	Departure.	Return.
District of Montana.								
							1877.	
Fort Ellis.....	Capt. Ed. Ball, 2d Cav.	Companies F, G, H, and L, 2d Cav.	8	164	....	12	Mar. 26	Still absent.
Do.....	Capt. Randolph Norwood, 2d Cav.	Company L, 2d Cav.	2	51	....	....	Aug. 8	Aug. 29, 1877
Do.....	Capt. G. L. Browning, 7th Inf.	Company G, 7th Inf., and detachment 2d Cav.	3	43	....	....	July 22	Still absent.
Fort Shaw.....	Col. John Gibbon, 7th Inf.	Detachment 7th Inf.	5	34	....	1	July 28	Aug. 24, 1877
Do.....	Capt. T. S. Kirtland, 7th Inf.	Company B, 7th Inf.	2	28	....	....	June 18	Still absent.
Camp Baker.....	Capt. Richard Comba, 7th Inf.	Company D and detachm't Company E, 7th Inf.	2	27	....	....	July 24	....do.....
Do.....	Capt. Walter Clifford, 7th Inf.	Detachment Company E, 7th Inf.	1	1	....	20	Sept. 23	Sept. 27, 1877
Fort Benton.....	Lieut. E. E. Hardin, 7th Inf.	Company F, 7th Inf.	1	21	....	....	July 25	Sept. 18, 1877
Do.....	....do.....	....do.....	1	21	....	....	Sept. 21	.....
Do.....	Maj. Guido Ilges, 7th Inf.	Detachment 7th Inf	1	1	....	40	Sept. 21	Sept. 29, 1877
Missoula Post.....	Lieut. F. Woodbridge, 7th Inf.	....do.....	1	4	....	....	July 18	July 24, 1877
Do.....	Lieut. C. A. Coolidge, 7th Inf.	....do.....	1	1	....	5	July 21	July 22, 1877

scouts in the Department of Dakota, &c.—Continued.

Country passed through.	Distance traveled (miles).	Tribes operated against.	Results.														Remarks.
			Indians killed.	Indians wounded.	Prisoners.			Property captured.	Property destroyed.	Our loss.							
										Killed.				Wounded.			
					Men	Women.	Children.			Officers.	Men.	Indians.	Citizens.	Officers.	Men.	Indians.	Citizens.
Mont. & Dak.	Unk'n.	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To cantonment on Tongue River, to form part of command of Col. N. A. Miles, 5th Infantry, in operations against hostile Indians. In July Company L was detached and returned to Fort Ellis. The battalion was commanded by Captain Ball from July 1 to July 17; by Major Brisbin from July 18 to August 31; by Captain Ball from September 1 to September 8; and from latter date by Captain Tyler.
Idaho & Mont.	534	Nez Percés	*	*	..	..	..	..	..	1	..	..	..	5	..	..	En route to report for service with column operating under immediate command of Col. John Gibbon, 7th Infantry, against hostile Nez Percés. Reported to Colonel Gibbon August (date unknown), and was assigned to duty with command of Brig. Gen. O. O. Howard. Was engaged with Indians at Camas Creek, Idaho, August 20, 1877.
Mont....	Unk'n.	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Missoula to report to Colonel Gibbon, 7th Infantry, for service against hostile Nez Percés.
..do	401	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Missoula to form junction with another portion of 7th Infantry for service against hostile Nez Percés.
..do	Unk'n.	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	This company left Fort Shaw June 18 for Dauphin Rapids as guard for party of engineers engaged on work of improvement of Upper Missouri River. On September 12 twelve men of the company, on detached service at Cow Island, guarding stores, were attacked by Nez Percés, who were repulsed. Four citizens served with the detachment during the attack. The entire company was moved to Cow Island September 28, 1877.
..do	549	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Missoula, via Fort Shaw, to report to Colonel Gibbon for service against hostile Nez Percés.
..do	121	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	No Indians encountered.
..do	561	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Missoula, via Fort Shaw, to report to Colonel Gibbon for service against hostile Nez Percés. Captain Williams joined the company en route.
.....	.....	.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	
Mont....	325	Nez Percés	1	..	..	..	..	..	..	..	1	..	..	..	..	..	To Fort Claggett and Cow Island to watch Nez Percés. Engaged them September 25, 1877, in skirmish of two hours.
..do	150	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Scouting in vicinity ef Lo-Lo Pass to obtain information regarding Nez Percés.
..do	76	....do	..	..	..	..	..	..	..	..	..	..	..	..	..	..	Do.

* Unknown.

Tabular statement of companies, expeditions, and

Posts from which parties were sent out.	Commanding officers of forces sent out.	Troops comprising command.	Strength.				Date of—	
			Officers.	Men.	Indians.	Citizens.	Departure.	Return.
							1877.	
Missoula Post	Capt. C. C. Rawn, 7th Inf.	Detachments Companies A and I, 7th Inf.	5	25	....	100	July 25	July 28, 1877
Do.....	Col. John Gibbon, 7th Inf.	Companies A, D, F, G, I, and K, 7th Inf., and detachm't 2d Cav.	17	132	....	34	Aug. 4	Aug, 21, 1877

HEADQUARTERS DEPARTMENT OF DAKOTA,
Saint Paul, Minn., March 25, 1878.

scouts in the Department of Dakota, &c.—Continued.

Country passed through.	Distance traveled (miles).	Tribes operated against.	Results.														Remarks.
			Indians killed.	Indians wounded.	Prisoners.			Property captured.	Property destroyed.	Our loss.							
					Men.	Women.	Children.			Killed.				Wounded.			
										Officers.	Men.	Indians.	Citizens.	Officers.	Men.	Indians.	Citizens.
Mont....	48	Nez Percés	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	To Lo-Lo Pass to endeavor to intercept Nez Percés. No engagement. Indians evaded troops.
Mont. & Idaho.	311	....do	89	..	..	..	..	..	..	2	21	..	6	5	31	..	4	In pursuit of hostile Nez Percés Indians under Chiefs Joseph, Looking-Glass, and others. Surprised them in camp at Big Hole August 9, 1877, when a sharp fight ensued. Indians fled on the evening of the 10th. After the action Companies A, D, and I were returned to Missoula post for duty, Companies F and K to their respective proper stations, and Company G, increased to fifty men, was assigned to service with the command of Brig. Gen. O. O. Howard; it was relieved from this service August 19, and ordered to Missoula post for duty.

ALFRED H. TERRY,
Brigadier General, Commanding.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 64.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

In compliance with a Senate resolution of April 15, 1878, a copy of the report of the hydrographic commission, convened at New Orleans, to examine and report upon the means necessary to protect the wharves and harbor at that point from the incursions of the Mississippi River.

APRIL 22, 1878.—Referred to the Committee or Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, April 19, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in compliance with the resolution of the Senate of the 15th instant, copy of the "report of the hydrographic commission which was convened in New Orleans to examine and report upon the means necessary to protect the wharves and harbor from the incursions of the Mississippi River."

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT
of the United States Senate.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., April 18, 1878.

SIR: I beg leave to return herewith the resolution of the Senate of the United States of the 15th instant: "That the Secretary of War be, and is hereby, directed to transmit to the Senate the report of the hydrographic commission which was convened in New Orleans to examine and report upon the means necessary to protect the wharves and harbor from the incursions of the Mississippi River," and in compliance therewith to submit the inclosed copy of the report referred to.

I concur in the views and recommendations of the board.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. McCRARY,
Secretary of War.

NEW ORLEANS, LA., *April* 8, 1878.

Hon. ED. PILSBURY, *Mayor of New Orleans:*

SIR: The board of engineers convened at the request of the city council "to examine and report upon the means necessary to protect the wharves and harbor from the incursions of the river," beg to submit the following:

Referring to your letter of November 17, 1877, the engineering information requested of the board was as follows:

First. A thorough and complete survey of the river and its banks from the upper to the lower limit of the city, giving cross-sections of the stream every half-mile, and the direction of the current.

Second. A plan for the temporary preservation of the banks and wharves from destruction, to apply only to the most exposed points, and adapted to the present resources of the city, which are limited, accompanied by estimates.

Third. A more general and comprehensive plan, embracing the river front of the second and third districts, as a permanent work, with estimates, so as to be commenced and carried on gradually as the future prosperity of the city may admit.

At a former session of the board, held in November last, a preliminary report was rendered your honor respecting the condition of affairs along the city front. In this the means necessary to be taken to preserve the most exposed points (which were at the foot of Saraparu street and at the foot of Montegut street) were presented, and the execution of the plans was intrusted to and carried out under the direction of the city surveyor. A general plan also was outlined, which was to embrace the entire city front, from Carrollton to a point below the United States barracks, or so much of it at least as needed permanent protection. The board were unprepared at that time to decide upon all the details to be observed in this permanent plan of protection, owing to the lack of the necessary information respecting the condition of the caving banks, their extent, their composition, slope, depth of water, &c., all of which could only be furnished by an exhaustive and extensive survey such as called for by your letter.

This survey was undertaken under the personal supervision of the local members of the board, with aid furnished by the government and by the city, and was carried to a successful termination. It is complete and thorough in all the details necessary for a proper study of the problem submitted to the board. It extended from a point above Carrollton to a point below the barracks, embracing also the right bank of the river, and was made in three sections. Section first started from a point some 3,300 feet above the Metairie road, at the upper end of a plank revetment where there is a wide batture, and followed the left bank to the Orleans Park, where there is also a wide batture, a total distance of 22,243 feet. At intervals of 100 feet lines of soundings were made extending out from 300 to 400 feet, and where there were caving banks intermediate lines were sounded. Thirty-four sections were also sounded across the river in this stretch, and from one hundred to one hundred and twenty soundings were located on each section. Thirty of these cross-sections were nearly at the same points as those made in the survey of 1851 by Captain (now General) Humphreys. From the Orleans Park to Canal street, there being no caving of the left bank, no survey of that line was made. Section second commenced at Canal street, and the shore-line was run from that point to the slaughter-houses, a distance of 21,800 feet. On this stretch soundings were made at each 100 feet, as before, extending out into the river from 300 to 400 feet. Twenty cross-sections were also sounded at nearly equal intervals, but only

about eighty soundings were located on each one. Section third included the right bank of the river, and commenced at a point 3,450 feet above the lock at Westwego, and extended down to the point at Algiers, and is some 47,000 feet in length. Soundings were made at intervals as in the surveys of the other sections, and nineteen cross-sections were sounded across the river between the lower end of the Carrollton section and Canal street, thus filling that interval.

Gauges were kept at Carrollton, Canal street, the mint, and at the United States barracks; and all soundings were reduced to the same plane of reference as that of the delta survey, and reads on the Carrollton gauge 15′.70.

The condition of the banks as developed by the survey is as follows:

From the upper end of the Carrollton survey to station 186 there is a wide batture and no caving going on at present. From station 186 to station 91 (at head of Carrollton avenue), there is more or less caving of the bank throughout the whole distance. Between stations 140 and 157 some 500 feet of the bank have caved in since 1858, and at the Carrollton Hotel, which is at the lower end of the present cutting, in that time some 200 feet have gone in. The total length of the caving in this section is 9,200 feet.

From station 91 down to station 55 there have been about 200 feet caved in since 1858, but there is little if any caving going on now, except in two places, one about 300 and the other about 200 feet long. Below station 55 there is a fill at present, and a wide batture.

Below Canal street, from Morgan's wharf, at station 10, to station 160, a distance of 15,000 feet, the bank needs more or less protection. It has, however, only been deemed advisable to apply protective measures to the slope of the bank from Morgan's wharf to Congress street, a distance of 7,500 feet, leaving the remaining portion of the city below that point to be protected by a new levee.

On the right bank the space through which the caving takes place extends from station 49 to 176, below the locks; and from station 296 to 476, above and at Algiers, a total length of 31,700 feet.

The board, however, does not deem it at present absolutely necessary to apply the works of protection to this entire stretch of bank, but only to a portion embracing Nine Mile Point.

The locations of the different caving banks at which it is proposed to apply the works of protection can better be understood by reference to the sketch map accompanying the report, while at the same time an inspection of the index and detailed maps will give all the information respecting the depths of water, slope of bank, composition of same, &c., much more fully than can be indicated or enumerated in the report.

The results of the survey of the banks show that they are composed of a hard blue mud with intermediate soft strata. These soft strata outcrop at various depths as shown on adjacent lines of soundings. In some cases they are quite regular, in others quite irregular, as if deposited upon a slope.

The cavings result from the saturation of these layers of soft material, which are afterward washed or cut out, causing the superincumbent mass to fall or slide into the river. This caving takes place mostly upon a falling river, the high water seeming to act by its pressure in sustaining the bank. These soft strata occur at various depths, from near the surface to near the bottom of the river, and the greater or less amount of cave seems to depend upon their relative position.

In order, then, to retain the bank in its natural position the remedy to be applied would seem to be some method by which the cutting out of the defective strata could be prevented. This is best subserved by

applying to the bank a revetment extending so as to cover the whole slope, or so much of it as is likely to be affected.

The banks along the city front present conditions not unfavorable to the successful application of a project such as was outlined in our preliminary report of November last.

The general method indicated there was to cover the slope of the bank with a revetment of brush and stone in such shapes and forms as best suited the particular locality where it was to be applied.

While much more costly applications of timber and stone might subserve the object in view, those of brush and stone in the shape of matting applied to the banks have the merit that, while suitable for the purpose, they are comparatively cheap, are durable, are easily applied, and on account of their pliability can be well adapted to the irregular slopes of the banks caused by the caving. At the same time the carpeting of the bank in such a manner causes no undue contraction of the waterway and allows the current to move along in its natural course.

At the upper section of the river at Carrollton, and on the right bank above Algiers, where there are no wharves, it is proposed, in accordance with the above views, to cover the slopes from a short distance above low water to a distance out such that all defective strata will be protected by a layer of brush formed into rafts, and ballasted with stone sufficient to keep them in position.

Along the section of the river from Morgan's wharf to the foot of Congress street it is proposed to form a bulkhead extending the entire distance, in a line with the outer row of wharf-piles, by driving piles in pairs, the distance between the centers of each pair being 6 feet and between the piles of each pair 3 feet. These piles in pairs are bolted together at low water and at the top. Between the piles extending up and down stream brush fascines are piled up to low-water mark, forming, so to speak, a brush wall. Above low-water mark, on the outside of the piles, plank are placed extending to high-water mark.

From the foot of this row of piles, extending out as far as may be necessary to cover all defective strata, a layer of brush and stone in suitable form is laid upon the slope.

The object in not continuing the revetment clear up to the bank, as in the other districts, is that it has been found from experience that great difficulty and expense will attend the removal of the great number of piles and timber-work now forming the wharves and occupying a portion of the slope needing protection, and which it would be necessary to remove were it determined to carpet the entire slope, adding considerably to the expense, and more than the circumstances would warrant.

Statistics at the disposal of the board indicate that the largest interests involved are in section 2, from Morgan's wharf to Congress street. It therefore seems expedient that the proposed measures of protection should be first applied to that part of the shore. Similar reasons indicate that the work on the Carrollton section No. 1 should be next done, and, finally, that work above Nine Mile Point on the right bank which is essential as a protection to the works in section 1 and the shore below.

The following are the estimates for the protection of so much of the city front as the board deems absolutely essential at the present time to the preservation of the wharves and harbor, though eventually the protection of the entire front may have to be undertaken. These estimates being approximations, the board has sought to make them sufficiently large to cover all contingencies, leaving to the engineer who may have charge of the construction of the work a certain latitude whereby such

changes as may appear necessary, and as circumstances call for, can be made as the work progresses.

Estimates.

Section 2, from Morgan's wharf to Congress street:		
Piles and planking, at $6.33 per running foot	$47,475	
Filling between piles, 6,600 cords, at $2.50 per cord	16,500	
Brush matting, 7,500 feet long, 200 feet wide in position, and ballasted	146,025	
	210,000	
Contingencies	25,000	
		$235,000
Section 1, at Carrollton:		
Brush matting, 9,200 feet long, 200 feet wide, sunk and ballasted, at $19.50 per running foot	179,400	
Contingencies	18,600	
		198,000
Section 3, Nine Mile Point:		
Brush matting, 2,000 feet long, 200 feet wide, sunk and ballasted at $19.50 per running foot	39,000	
Contingencies	4,000	
		43,000
Total estimated cost		476,000

Herewith are transmitted the drawings* pertaining to the survey, consisting of 4 index charts; 1 sketch map, showing locations of proposed improvements; 2 sectional drawings, showing details of proposed constructions; 43 sheets of drawings showing details of survey.

There are also transmitted all the papers alluded to in our preliminary report, consisting of letters, views, &c., of professional and other persons in regard to the work.

The board desire to express their acknowledgment of the valuable services rendered by Commodore C. P. Patterson, Chief of the United States Coast Survey; the officers and crews of the United States men-of-war Enterprise and Canonicus; Messrs. H. C. Collins, W. H. Williams, George d'Hemecourt, M. W. Darton, H. S. Douglass, Eugene Thompson, and Capt. M. W. Francis, and their assistants.

We would respectfully recommend to your honor that provision be made for completing the maps, &c., of the survey, and the careful preservation of the same as a valuable contribution to the hydrography of the river in the vicinity of New Orleans.

All of which is respectfully submitted.

G. WEITZEL.
W. H. H. BENYAURD.
C. W. HOWELL.
B. M. HARROD.
J. A. D'HEMECOURT.
ROBT. C. WOOD, *Secretary.*

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* Not with the manuscript furnished to the printing office.—[Printer.]

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 65.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of March 18, 1878, *information in relation to the necessity for erecting beacon-lights to mark the channel on the line of inland navigation through North Landing River, Currituck Sound, and North River, North Carolina.*

APRIL 24, 1878.—Referred to the Committee on Commerce and ordered to be printed.

TREASURY DEPARTMENT,
April 23, 1878.

SIR: I have the honor to acknowledge the receipt of the resolution of the Senate, dated March 18, 1878, requesting a report from this department relative to the necessity for erecting beacon-lights to mark the channel on the line of inland navigation through North Landing River, Currituck Sound, and North River, North Carolina.

In reply, I transmit herewith a copy of a letter of the 20th instant from Maj. P. C. Hains, U. S. A., engineer secretary of the Light-House Board, in which it is stated that the subject has been carefully considered by the board, and the conclusion reached that from the number of vessels navigating Currituck Sound annually this inland commerce would be benefited by the erection of a number of small beacon-lights, to be established in the water on iron piles, at an estimated cost of twenty thousand dollars.

The resolution is herewith returned.

Very respectfully,

JOHN SHERMAN,
Secretary.

The Honorable WILLIAM A. WHEELER,
President of the Senate.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, D. C., April 20, 1878.

SIR: I have the honor to acknowledge the receipt of the resolution of the Senate of March 18, 1878, relative to the necessity for or expediency of erecting beacon-lights to mark the channel on the line of inland navigation through North Landing River, Currituck Sound, and North River, North Carolina, referred by you to this office for report.

With reference to the necessity for and advisability of erecting beacon-lights for the purpose named, I beg leave to say that the Light-House Board has given this matter careful consideration, and that the conclusion has been reached that from the number of vessels navigating Currituck Sound annually this inland commerce would be benefited by the erection of a number of small beacon-lights. The structures should be established in the water on iron piles.

The estimate cost of establishing this system of lights is $20,000.

The resolution of the Senate referred by you to this office is herewith respectfully returned.

Very respectfully,

PETER C. HAINS,
Engineer Secretary.

The honorable the SECRETARY OF THE TREASURY.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 66.

LETTER

FROM

THE POSTMASTER GENERAL,

TRANSMITTING

Copies of sundry communications addressed to the House of Representatives, in relation to appropriations to supply deficiencies for the service of the Post-Office Department for the current fiscal year.

APRIL 25, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

POST-OFFICE DEPARTMENT,
Washington, D. C., April 24, 1878.

SIR: I have the honor to inclose you herewith, for the information of the Senate, copies of sundry communications this day transmitted to the House of Representatives, requesting appropriations to supply deficiencies for the service of the Post-Office Department for the current fiscal year.

Very respectfully,

D. M. KEY,
Postmaster-General.

To the honorable the PRESIDENT *of the Senate.*

POST-OFFICE DEPARTMENT,
Washington, D. C., April 23, 1878.

SIR: I have the honor to invite the attention of the House of Representatives to the inclosed communications from the Acting First Assistant Postmaster-General and the Third Assistant Postmaster-General, and, in accordance with the recommendations therein contained, to request that the following appropriations be made, viz:

1. To supply deficiencies in the appropriation for the compensation of postmasters for the fiscal year ending June 30, 1878, the sum of $900,000, or so much thereof as may be necessary, to be paid out of the postal revenues for said fiscal year.

2. To supply deficiencies in the postal revenues for the fiscal year ending June 30, 1878, the sum of $2,137,787.10, out of any money in the Treasury not otherwise appropriated.

It will readily be seen that these appropriations are necessary to properly conduct the service of this department.

Very respectfully,

D. M. KEY,
Postmaster-General.

HON. SAMUEL J. RANDALL,
Speaker of the House of Representatives.

POST-OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., April 23, 1878.

SIR: It seems probable, from statements made to this office by the Auditor for the Post-Office Department relative to the amount paid as compensation to postmasters for the quarters ended September 30, 1877, and December 31, 1877, of the current fiscal year, that there will be a considerable deficiency in the amount appropriated for that item for the fiscal year ending June 30, 1878.

The amount appropriated for the current fiscal year is		$7,250,000 00
The Auditor reports that there was expended for compensation to postmasters for the quarter ending September 30, 1877	$1,877,186 00	
And for the quarter ending December 31, 1877	1,979,556 25	
Making a total for the two quarters of		3,856,742 25
Which leaves a balance for the two remaining quarters of the fiscal year of		3,393,257 75
Which amount remaining for the next two quarters is		463,484 50

Less than that expended for the first two quarters of the fiscal year.

The increase of expenditure for this item for the quarter ended December 31, 1877, over that of September 30, 1877, was $102,370.25. Presuming, from the returns from postmasters and the experience of the department for the two quarters mentioned, September 30 and December 31, 1877, that the increase for the two quarters remaining, March 31, 1878, and June 30, 1878, will be in the same ratio, there will probably be expended—

For the quarter ending March 31, 1878, about	$2,081,926 50
And expended for the quarter ending June 30, 1878, about	2,184,296 75
Making for the remaining two quarters of the current fiscal year about.	4,266,223 25
Add to this the amount reported by the Auditor as expended for the two expired quarters	3,856,742 25
And we have an estimated total for this item for the fiscal year 1877–'78 of	8,122,965 50
The appropriation for the fiscal year 1877–'78 for compensation to postmasters is	7,250,000 00
Which leaves an estimated deficiency of	872,965 50

In that item for the current fiscal year.

You are aware that the present method of paying the salaries of postmasters is regulated by an act of Congress approved July 12, 1876, and consequently is not at all within the discretion of the department; hence the estimated deficiency mentioned above is one for which the department, it is considered, is not in any degree responsible.

Much of this sum is no doubt chargeable to the opportunity afforded postmasters, under the present law, of making false returns of stamps, stamped envelopes, &c., sold, and receiving compensation therefor, before the department can, with its present facilities, detect them in this violation of the statutes. Many postmasters throughout the country have, since the passage of the present law, adopted this means of increasing their salaries, as you well know, and, notwithstanding the department has done its utmost to correct the evil, the practice is still carried on quite extensively. A very large part of this deficiency will be owing, therefore, to the defects in the operation of the salary law itself, the control of which lies entirely with Congress. A portion of the estimated deficiency will likewise be due to the fact that the esti-

mate of this bureau as to the amount required to be appropriated for compensation to postmasters for the fiscal year 1877–'78, which was $7,500,000 was not all appropriated, the appropriation being $7,250,000; a sum deemed by the department, at the outset, much too small for the ordinary requirements of this branch of service. It is also proper to state that a larger number of new post-offices has been established during the past nine months of the present fiscal year than during the same number of months in any fiscal year for some time past.

In considering the amount necessary to be appropriated in order to meet the expected deficiency in this item, I am of the opinion that the sum required will be rather over than under the estimated figures given above, viz, $872,965.50. Therefore, in order to provide against any contingencies which may arise before the close of the present fiscal year, I have to request that you will recommend to Congress that the sum of $900,000, or so much thereof as may be necessary, be appropriated by Congress, at its present session, to meet whatever deficiency may arise in the item of compensation to postmasters for the fiscal year ending June 30, 1878.

I am, yours, very respectfully,

JAMES H. MARR,
Acting First Assistant Postmaster-General.

Hon. D. M. KEY,
Postmaster-General.

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., April 22, 1878.

SIR: It is evident, from a statement of business for the six months ending on the 31st of December last, that the revenues of the department and the amount appropriated from the general Treasury to supply deficiencies and for special objects will not be sufficient to meet the authorized expenditures for the current fiscal year.

The following are the amounts authorized to be expendet, viz:

For service of the Post-Office Department for the fiscal year ending June 30, 1878, &c. (act approved March 3, 1877, Stats., vol. 19, chap. 110, pp. 383–385)	$33,578,143 00
For commission to examine railway mail-service (same act)	6,000 00
For the payment of railway post-office clerks, &c., deficiency for fiscal year 1878 (act approved December 15, 1877, Stats., Pub. No. 2, p. 3)	10,000 00
For "star" service, &c., deficiency 1878 (same act)	500,000 00
For post-route maps, deficiency 1878 (same act)	5,000 00
For expenses of delegates to International Postal Congress, at Paris, (same act)	4,000 00
Total authorized expenditures	34,103,143 00

The appropriations from the general Treasury to meet the foregoing are as follows, viz:

To supply deficiencies (act approved March 3, 1877, Stats., vol. 19, chap. 110, p. 385	$2,939,725 00
For railway post-office clerks, &c. (act December 15, 1877)	10,000 00
For star service (same act)	500,000 00
For International Postal Congress (same act)	4,000 00
Total appropriated from the general Treasury	3,453,725 00

As will be seen, the regular Post-Office appropriation bill (act of March 3, 1877) authorized an expenditure of $33,584,143, and to meet the expenditure appropriated out of the general Treasury, the sum of $2,939,725, leaving a balance of $30,644,418 to be supplied out of the

revenues. The deficiency bill of the present session (act of December, 15, 1877) authorized an additional expenditure of $519,000, of which $514,000 was appropriated out of the general Treasury, leaving a balance of $5,000 (for post-route maps) to come out of the revenues.

The total authorized expenditures amount to $34,103,143, and the appropriations from the Treasury to $3,453,725, leaving a balance of $30,649,418 to be supplied from the postal revenues.

The revenues for the six months ended on the 31st of December last were $14,253,315.45, and at this rate for the entire fiscal year they will amount to $28,506,630.90, or $2,137,787.10 less than the amount that would appear to be required, and for which it will be necessary that provision be made by a further appropriation from the Treasury.

The revenues for the year were estimated (page 4, report of Postmaster-General for year ending June 30, 1876) at $30,645,165, or $2,138,534.10 more than the estimate just given upon the actual receipts for the first six months of the fiscal year.

This decrease is owing partly to the continued depression of the business interests of the country, and partly to the fact that the original estimates included $750,000 for official postage-stamps for the use of the Post-Office Department, for which, however, Congress failed to make appropriation, and which, consequently, did not become available as revenue.

It will undoubtedly be true that in some items, particularly those pertaining to this office, the department will not expend the full amounts authorized; but it is not best to make any allowance for these, for the reason that there will undoubtedly be a large deficiency in the appropriation for the compensation of postmasters, which is fixed by law, and the amount of which, consequently, cannot be regulated by the department, and for the further reason that the revenues for the entire fiscal year possibly may not hold out at the rate exhibited for the first six months thereof.

In view of the facts, I would recommend that Congress be requested to make an appropriation of $2,137,787.10, or so much thereof as may be necessary, "to supply deficiencies in the revenues of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight."

Very respectfully,

A. D. HAZEN,
Third Assistant Postmaster-General.

Hon. D. M. KEY,
Postmaster-General.

○

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 67.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In compliance with a Senate resolution of January 15, 1878, *information in relation to the amount of the government bonds sold since March* 4, 1861.

APRIL 25, 1878.—Referred to the Committee on Finance and ordered to be printed.

TREASURY DEPARTMENT,
Washington, D. C., April 22, 1878.

SIR: In compliance with the following resolution of the Senate of January 15, 1873:

Resolved, That the Secretary of the Treasury be directed to inform the Senate of the amount of the government bonds sold since March 4, 1861, giving the amounts of each issue with its date thus sold, the net amounts received from the sale of each issue, and the currency in which the same was paid; also the amount paid any syndicate, person, or persons for placing the same on the market or for purchasing the same and in what currency they were paid—

I have the honor to forward herewith a statement of the issue of loans and treasury-notes from March 4, 1861, to June 30, 1877, inclusive, showing the title of each loan, the acts under which issued, the rate at which sold, the amount realized, the principal of each loan, the amount reissued, the premium and discount, and the amount received in coin, currency, or in other securities by conversion.

Prior to the passage of the acts of July 14, 1870, and January 20, 1871, commissions and expenses of loans were paid from the general appropriation "Expenses of National Loans" and owing to the number of items involved, it is impracticable with the present force of the department to ascertain the amount paid for commissions alone. As bearing on this matter your attention is invited to the accompanying copy of a letter from the Register of the Treasury of the 5th instant.

Under the several contracts for placing the bonds authorized by the acts of July 14, 1870, and January 20, 1871, a commission of one-half of one per cent. has been allowed, but the contracting parties were to pay therefrom all expenses of issue and delivery. The net amount of commissions cannot therefore be ascertained by the department.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. WM. A. WHEELER,
President of the Senate.

Statement of the issue of loans and Treasury notes since March 4, 1861, to June 30, 1877, inclusive, prepared in reply to Senate resolution of January 15, 1878.

Titles.	Authorizing acts.	Rates at which sold.	Principal.					Premium.	Reissues.
			Coin.	Currency.	Conversions.	Discount.	Total principal.		
Temporary loan	Feb. 25, May 17, July 11, 1862, June 30, 1864.	Par	§$4,969,531 91	$725,129,715 25			$730,099,247 16		
Certificates of indebtedness	Mar. 1, May 17, 1862, Mar. 3, 1863.			561,753,241 65			561,753,241 65	$176,809 38	
Coin certificates	Mar. 3, 1863, sec. 5.	Par	53,313,700 00				*53,313,700 00		$865,161,380 46
Three per cent. certificates	Mar. 3, 1867, July 25, 1868.	do			$85,155,000 00		85,155,000 00		
Treasury notes of 1861	Mar. 2, 1861		35,364,450 00				35,364,450 00	414 70	
Temporary loan of 1861	July 17, 1861	Par	44,375,000 00				44,375,0 0 00		
Seven-thirties of 1861	do	$20,009,850, at $3.25 premium.	137,978,300 00		‡2,071,450 00		‡140,049,750 00	650,320 44	
Old demand notes	July 17, Aug. 5, 1861, Feb. 12, 1862.	Par	60,030,000 00				60,030,000 00		
Legal tenders	Feb. 25, July 11, 1862, Mar. 3, 1863.	do		447,300,203 10			*447,300,203 10		980,573,396 90
Fractional currency	Mar. 3, 1863, June 30, 1864, &c.	do		49,102,660 27			*49,102,660 27		319,617,419 24
One-year notes of 1863	Mar. 3, 1863	do		44,520,000 00			44,520,000 00		
Two-year notes of 1863	do	do		166,480,000 00			166,480,000 00		
Compound-interest notes	Mar. 3, 1863, June 30, 1864.	do		266,595,440 00			266,595,440 00	1 25	
Seven-thirties of 1864 and 1865.	June 30, 1864, Mar. 3, 1865.			829,992,500 00			‖829,992,500 00	316,876 14	
Loan of Feb. 8, 1861, 1881s	Feb. 8, 1861	.85 to 1.27	16,395,223 90			2,019,776 10	18,415,000 00		
Oregon war-debt	Mar. 2, 1861	Par			‡1,090,850 00		1,090,850 00		
Loan of July and Aug., 1861	July 17 and Aug. 5, 1861.		44,661,231 91			5,338,768 09	¶50,000,000 00		
					139,321,350 00		139,321,350 00		
Five-twenties of 1862	Feb. 25, 1862, Mar. 3, 1864, Jan. 28, 1865.			514,771,600 00			514,771,600 00	1,826,868 75	
Loan of 1863	Mar. 3, 1863, June 30, 1864.	Average premium of 4.13		75,000,000 00			75,000,000 00	3,339,751 70	

Ten-forties of 1864	Mar. 3, 1864	Par to 7 per cent. premium.		196,117,300 00			196,117,300 00	1,294,035 67	
Five-twenties of March, 1864	....do	Par		3,882,500 00			3,882,500 00		
Five-twenties of June, 1864	June 30, 1864			125,561,300 00			125,561,300 00	3,178,710 81	
Five-twenties of 1865	Mar. 3, 1865, Apr. 12, 1866.						203,327,250 00	995,247 00	
Consols of 1865	....do			377,348,350 00	581,134,950 00		332,998,950 00	21,529,199 85	
Consols of 1867	....do						379,617,750 00	20,341,594 36	
Consols of 1868	....do	Par					42,539,350 00		
Funded loan of 1881	June 14, 1870, Jan. 21, 1871, Dec. 17, 1873, Jan. 14, Mar. 3, 1875.	....do					17,494,150 00		
			439,540,550 00		63,996,600 00		486,043,000 00	462,365 58	
		Par			13,957,000 00		13,957,000 00		
		....do			‡500,000 00		500,000 00		
Certificates of indebtedness, 1870.	July 8, 1870	....do			‡678,362 41		678,362 41		
Certificates of deposit	June 8, 1872	....do		64,780,000 00			*64,780,000 00		313,467,000 00
Funded loan of 1891	July 14, 1870, June 20, 1871, Jan. 14, 1875.	....do	140,000,000 00				140,000,000 00		
			976,627,987 72	4,448,334,810 27	887,905,562 41	7,358,544 19	6,320,226,904 59	54,112,195 63	2,478,819,196 60

* These are the greatest amounts outstanding at any period, and do not include reissues or exchanges of old for new notes.
† The issue in this case was $140,094,750, but $45,000 was canceled before being put in circulation.
‡ Issued for outstanding indebtedness.
§ Advance of Baring Bros., London.
‖ The issue in this case was $834,382,953.21, but $4,390,453.21 was returned by Jay Cooke & Co. and canceled.
¶ $50,000,000 6 per cent. bonds were sold at a discount, making the loan equivalent to 7 per cent. bonds at par.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
April 5, 1878.

SIR: In reply to your letter of the 4th February last, requesting a verification of an accompanying statement of the receipts and expenditures on account of loans, Treasury notes, &c., with the records of this office, I would respectfully state that the records of this office do not embrace the amount or rate of commission paid, the amount on which commissions were paid, whether paid in coin or currency, or the amount paid for discount or received for premium.

The only portion of the statement submitted by you susceptible of verification is the amount received from loans, Treasury notes, &c., which agrees with the records of this office.

The only additional information, in reply to the resolution of the Senate, that could be furnished from the records of this office, would be the amount of commissions paid under the earlier loans; but as the amounts paid for commissions have never been kept separate from the other expenses of loans, the information can only be obtained by an analysis of this account, which, considering its magnitude, would require more clerical force than this office can spare from its current work, and would take more time than the resolution anticipated.

On this point I await further instructions. The statement is herewith returned.

Very respectfully, your obedient servant,

G. W. SCOFIELD,
Register.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 68.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

INCLOSING

A copy of a letter addressed by him to the Speaker of the House of Representatives, in relation to the bill to reduce the expense of the public printing and binding, and for other purposes.

APRIL 29, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
April 26, 1878.

SIR: I have the honor to inclose herewith a copy of a letter addressed by me to-day to the honorable the Speaker of the House of Representatives of the United States, in reference to the bill (H. R. 4292) "to reduce the expense of the public printing and binding, and for other purposes."

Very respectfully,

JOHN SHERMAN,
Secretary.

The PRESIDENT
Of the Senate of the United States.

TREASURY DEPARTMENT,
April 26, 1878.

SIR: My attention having been called to the bill (H. R. 4292) "to reduce the expense of the public printing and binding, and for other purposes," I have the honor to state that while the general purpose of the bill meets my hearty approval, the adoption of some of its provisions appears to be objectionable, and that of others would very seriously embarrass this department.

Sections 12 and 13 provide as follows, viz:

The Public Printer is hereby authorized to print, and bind in paper, on departmental requisitions, such number, not to exceed fifteen hundred, of the annual and special reports of the heads of the several departments and of the subordinate bureaus thereof, as may be required for the use of the same: *Provided, however*, That the total number of pages of any particular department report shall not exceed five hundred, and the amount thereof shall be charged against the fund for printing and binding of the department.

That no department shall use the funds appropriated to it for printing and binding in the publication of reports, books, and documents other than those herein designated, except upon the order of Congress; and no Congressional document or report of any department or bureau shall be printed or bound by the Public Printer, upon department requisition, unless authorized by law.

These provisions if adopted would restrict the printing of the annual reports of this department to fifteen hundred copies. This number is more than ample for the use of the department, but calls are made from all sections of the country for copies of these reports, and with the supply heretofore received there are remaining available for distribution only the reports for a few years. The tables accompanying these reports are prepared with much care and labor, and when once set up the cost of a few copies more or less, plainly bound, is inconsiderable; and in view of the demand for them the restriction in their issue as proposed appears to me to be objectionable.

The last clause of section 13 if enacted into a law will prevent the printing by this department of any reports, except those made by the Secretary or one of the bureau officers. Occasionally reports are received from other officers which are of much importance and several copies of them necessary. To print them is not more expensive than to make the necessary copies in manuscript, which at best are not so convenient or reliable. For this reason I think that the number and character of the reports to be printed for this department should be left to the discretion of the Secretary.

Section 29 reads as follows, viz:

> That all the printing-offices and binderies attached to the various executive departments, save and except one to be used exclusively in printing weather-maps for the Signal Corps of the United States, be, and the same are hereby, abolished; and the materials and machinery thereof shall, as soon as practicable after the passage of this act, be transferred to the Government Printing Office; and the heads of the executive departments are hereby prohibited from causing any printing or binding to be done in their respective departments.

At present there are employed in this department, paid from the contingent-expense appropriation, five binders and one laborer. They bind for filing, the schedules of interest due on the loans of the United States, the press copies of official letters, the canceled securities, and repair binding of ledgers and manuscript books of the department. To send these articles away from the building for binding would involve a risk and inconvenience which the government should not needlessly assume, especially when this work can be done in the building as cheaply as elsewhere.

There is also at present in the Treasury building a small printing-office, a branch of the Public Printing Office. In this office are printed the schedules of interest, calls for bonds, the circulars of the department, and other papers requiring special haste or temporary secrecy.

The expense of having the printing done at the branch office is not greater than if done at the main office, and it is a great convenience, as well as a matter of safety, to have this work done in the building.

Very respectfully,

JOHN SHERMAN,
Secretary.

The Hon. SPEAKER
of the House of Representatives.

O

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 70.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a Senate resolution of April 16, 1878, *information in relation to the employment of W. R. Whitaker in the internal revenue service at New Orleans, La.*

MAY 6, 1878.—Read, ordered to lie on the table, and be printed.

To the Senate of the United States:

In answer to the resolution of the Senate of April 16, 1878, I transmit herewith reports made to me by the Secretary of the Treasury and the Attorney-General.

R. B. HAYES.

EXECUTIVE MANSION, *May* 2, 1878.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 30, 1878.

SIR: I have the honor to acknowledge the receipt, by reference from the Executive Mansion, of Senate resolution of April 16, 1878, as follows:

Resolved, That the President be requested, if not incompatible with the public interest, to inform the Senate whether W. R. Whitaker, who recently presided in the superior criminal court of the parish of Orleans, was formerly employed either in the internal-revenue service or as assistant treasurer at New Orleans; if so, during what period of time; whether in either of said capacities the said Whitaker is a defaulter to the United States, and to what amount, and under what circumstances; whether legal proceedings have been taken against said Whitaker, either civil or criminal, and with what result; whether such proceedings are still pending, or, if discontinued, when they were discontinued, and by whose direction.

In reply to that portion of which this department has any information, I transmit herewith copies of certain documents, below described, from which it will be seen that Mr. Whitaker held the office of collector of internal revenue in the first district of Louisiana from December 12, 1863, to April 9, 1865, and that a suit is now pending against him in his collection account for $11,182.06.

It also appears that Mr. Whitaker was assistant treasurer of the United States at New Orleans, in possession of the office from October 15, 1866, to May 10, 1867; that while in office a large deficit occurred, the particulars of which are set forth in the report of John Jay Knox, herewith. The amount of the original deficit, $1,076,797.29, has been reduced to $680,891.53, as stated by the Treasurer of the United States in his letter herewith.

Inclosed is also a statement showing by items in what manner the deficit in question has been reduced. The expense of converting the items turned over by Thomas P. May, the predecessor and bondsman of Mr. Whitaker, and the moneys advanced in the transaction, appear in this account as debit items, the credit items representing the gross proceeds received from conversion of the property into cash.

Inclosures.

Report of John Jay Knox, of May 13, 1867, to Secretary of the Treasury, and accompanying papers.

Statement of account of the May and Whitaker deficit in New Orleans subtreasury.

Letter of Treasurer of the United States to Secretary of the Treasury, dated April 20, 1878.

Letter of the Solicitor of the Treasury to the Secretary of the Treasury, dated April 22, 1878.

Letter of the First Comptroller to the Secretary of the Treasury, dated April 19, 1878.

Very respectfully,

JOHN SHERMAN,
Secretary.

The PRESIDENT.

NEW ORLEANS, *May* 13, 1867.

DEAR SIR: We arrived in New Orleans on Friday eve, having been delayed, much to our annoyance, by changes in the time-tables of the railroads.

The delay, however, was good fortune, for we found that the assistant treasurer had left the city that morning, for the first time in a year, to be absent three days. We commenced our examination on Saturday morning, and from the courteous and assuring manner in which we were received by the cashier we were confident that everything was right.

The cash-books showed an aggregate of cash on hand of $6,257,720.30, and there was an excess of about $36 in "coin," which amounted to $1,093,482.71.

The cash items were $6,945.80, and consisted of advances, or moneys borrowed by the assistant treasurer for his own use.

The greenbacks in vault were represented to be $4,798,438, but after examination we found a deficit of more than $1,100,000, and called upon the cashier for the balance of funds. He said he knew nothing of the balance required, but supposed it to be in Mr. Whitaker's box. We immediately seized the box and requested the key. The cashier stated that Whitaker had it in his possession, and implored us to wait for his return on Monday morning. He resumed his duties at the desk, and we dispatched immediately the porter for a locksmith, who returned saying the locksmith was out; we sent him for another, and the box was opened, in which we found greenbacks and other paper, not considered greenbacks in General Spinner's office, as described in the schedule annexed.

After this astounding discovery we dispatched a message to Mr. Case, for consultation, as per your verbal instructions. Mr. Case was

greatly astonished, as he had strongly urged the appointment of assistant treasurer. In company with him we called on General Sheridan, who in this case exhibited his usual readiness to act in such an emergency. He said the United States court had just organized, and he preferred that our first steps should be taken through that court, but if prompt action for any reason could not be obtained he would at once use military intervention.

A dispatch was sent through his cipher, through the War Department, to you, stating briefly the defalcation. Your dispatch in reply was received on Sunday, while we were busily engaged in examining the balances due to T. P. May, Whitaker, Heron, Mansfield, and other depositors in First National Bank, when we found, much to our surprise, a balance of more than $315,000 due to T. P. May. We also found the government deposits to be $208,000, much less than the securities. We soon afterward met the district attorney at General Sheridan's headquarters, and all parties agreed that the first steps to be taken were to collect, if possible, the check of T. P. May for $80,000, and also realize upon the balance of his deposit. The court was to meet for the first time at 11 o'clock this (Monday) morning, and as we wished to avoid delays, an order was obtained from General Sheridan, a copy of which is inclosed, commanding the bank officers to deliver to us all funds in their possession of T. P. May and other bondsmen of Whitaker. On the opening of the bank this morning we counted the cash, and found it to consist of greenbacks, $47,000, gold, $31,000, a large amount of demand loan, which, from their appearance, had been on hand for weeks and months, and are of doubtful value. Forty thousand dollars was immediately transferred to the Treasury, and indorsed on the check of May for $80,000, and after great persistency during the day, $27,000 more was obtained at a few minutes before the hour for closing the bank, the drunken president of the bank having failed to make up the balance of the check as he had promised to do early in the morning. We also collected the $8,000 check of Mansfield, which is as described among the contents of box.

On Sunday evening an interview was had with May, at his request, in his $50,000 mansion, where he was told that no assurances could be made to him on the part of the government, but that we were willing to hear any statement which he desired to make. He acknowledged that he had received the amount of the deficit, and that the balance to his credit in the bank belonged to the government. He furnished a list of the assets which he proposed to turn over if the thing could be kept quiet and he allowed to realize upon them. A copy of which statement is herewith appended.

Next morning the assistant treasurer had returned, and himself, May, J. S. Whitaker, Mansfield, and district attorney, were in consultation with us. The assistant treasurer stated that upon assuming his office he found about $500,000 of certificates of First National Bank in the treasury, which he received as cash, and that he had in a number of instances received payment for large amounts of transfer orders in the certified check of May, then president of the bank; that he had done this to save the bank, and through his friendship for May, that he had received no personal consideration, and that secretly the checks on the bank had been exchanged for the notes and bills of exchange found by us in his box. He said he would pay at once the cash items, amounting to $6,000, before referred to, and in a few days the note of Harrison (for $10,000), the cashier of the treasury. (See schedule.)

May repeated his statement of Sunday night, and himself and Mansfield asked until to-morrow morning to see if they could not raise funds to meet his (May's) liabilities. We had determined upon the collection of the check of $80,000 to have served the order of General Sheridan upon the bank officers and to have arrested at once Whitaker, May, Harrison, and Mansfield; but May produced, to our surprise, a certified check for $315,779.10, the full amount of his balance, on which account, since the certification of that check, we had already collected $67,000. He offered, and we accepted without receipts, this check, and on which we expect to receive $31,000 gold at currency rates. We therefore thought it unnecessary to serve the military order. We also have deferred the arrest of the parties, which we expect hereafter to make through the court, which is now organized, and to seize, if possible, at once, all the property of these parties, unless some arrangement is made. In company with the district attorney, who seems very efficient, we had a confidential interview with the United States district judge, who advised the course we have pursued. The parties understand their positions, and are already fully conscious of the terrors of the law.

Mr. May and Mansfield, they say, were about to organize a private banking-house in this city (in company with Oakes Ames, of Boston, Mass.) under the firm of T. P. May & Co.

The assistant treasurer says that the drafts, $360,000, drawn by T. P. May & Co. on Oakes Ames, is the firm above referred to, and that May holds a letter of credit authorizing him to draw drafts on Oakes Ames in amounts of not more than $100,000 at a time, and that these drafts were without date that they might be filled in on the day that they were sent forward. Mansfield denies that he knew of the existence of these drafts, and says that May had no authority to sign the firm's name.

We shall write and telegraph you fully and promptly future developments.

The assistant treasurer and cashier have been suspended from their duties, and we have charge to-day of the treasury, and expect to-morrow to have charge of the bank, and hope a receiver will be speedily appointed to relieve us of the responsibilities of that institution.

As many checks were presented by depositors to-day and payment declined, a great deal of excitement is already manifested, which will, of course, be increased to-morrow.

The other national banks in the city are in good standing here. Louisiana National Bank has to-day paid $75,000 transfer orders and $25,000 to credit First National Bank of Memphis, Tenn., leaving the excess of securities over government deposits about $100,000. They fear trouble and a run upon them to-morrow.

We are happy to state that our course and action in this case has been entirely harmonious, and we trust it will meet with the approval of the department.

Respectfully submitted.

JNO. JAY KNOX.
JAS. F. MELINE, JR.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury, Washington, D. C.

Statement of liabilities and assets of T. P. May (handed Mr. Knox by Mr. May).

Liabilities	$1,040,000
Assets:	
In bank	323,000
Steamer Virgin	75,000
House and furniture	50,000
J. O. Nixon	25,000
1,410 shares in First National Bank	141,000
Payne plantation	44,000
Carrollton Railroad	480,000
Interest in commission business in New Orleans	66,000
Total assets	1,204,000

All of which, with the exception of item $44,000 for the plantation, can be realized in ninety days.

Statement of cash.

FRIDAY, *May* 10, 1867.

Fractional currency returned			$26 60
7.30 interest note			50 00
Counterfeit fractional currency			4 10
One bill S. Jackson (watchman)			25 00
One bill F. Ritter (porter)			10 00
One by D. B. Bonfoey, coll. J. R			10 00
One by First National Bank, Selma			60
Bill F. Ritter, for towels			16 80
Legal tenders in tray,	$1,000		173,000 00
	$500		41,500 00
	$100		300 00
	$50		400 00
	$20		3,480 00
	$10		870 00
	$5		3,205 00
	$2		222 00
	$1		1,072 00
Mutilated			227 00
Memoranda in box (due by A. Elmore, United States depository)			10 36
W. R. W., cash items			6,945 80
Nickels out	$18 72		
Fractional in box	256 90		
			275 62
7.30 coupons			850 42
5 per cent. coupons			33 43
5 per cent. interest notes and interest paid			1,086 50
Memoranda (salaries)			1,203 00
Fractional in vault	$92,851 95		
Fractional loose	3,750 00		
			96,601 95
Greenbacks in vault			4,798,438 00
Coin (gold, silver, demand notes, &c.)			1,093,482 71
From receiving-teller			34,313 41
A. P. H. (salary)			60 00
			6,257,720 30

Statement of money and papers found in tin box of William R. Whitaker, assistant treasurer, New Orleans, La.

Legal tenders		$500,000
Draft of T. P. May on First National Bank, New Orleans, order myself, dated February 15, 1867, and indorsed paid		80,000
Draft of A. S. Mansfield on Commerce Bank, New Orleans, paid order William R. Whitaker, dated April 22, 1867, and no indorsement		8,000
30 days' sight T. P. May & Co., order of ourselves on Oakes Ames, esq., Boston, Mass., and indorsed	$100,000	
20 days' sight, same	75,000	
20 days' sight, same	75,000	
15 days' sight, same	50,000	
10 days' sight, same	60,000	
		360,000

Brought forward	$360,000

EXCHANGE.

T. P. May on A. C. Graham, 3 Broad street, New York City, at 10 days' sight, and indorsed, No. 1	$100,000	
Same, 20 days' sight, No. 2	100,000	
Same, 45 days' sight, 3	100,000	
Same, 30 days' sight, 4	75,000	
Same, 15 days' sight, 5	25,000	
Same, 45 days' sight, 6	30,000	
Same, 30 days' sight, 7	45,000	
Same, 15 days' sight, 8	50,000	
Same, 30 days' sight, 9	50,000	
Same, 15 days' sight, 10	25,000	
		600,000
* Note of A. C. Graham, per T. P. May, payable at First National Bank, New Orleans, La., and dated December 31, 1866		600,000
Note of A. P. Harrison, cashier, assistant treasurer's office, to the order of W. R. Whitaker, dated November 1, 1866		10,000

Daily statement, office of assistant treasurer, New Orleans.

Dr.			Cr.	
LIABILITIES.			ASSETS.	
To Treasurer United States	$2,505,560 18		By United States notes (legal-tender, national bank): Large, Medium, Small,	$3,940 111 00
To Treasurer, transfer account	523,307 89		By fractional currency	96,601 79
To Post-Office Department	68,100 03		By United States demand-notes	3,230 00
To disbursing officers	2,890,508 41		By gold coin	1,035,356 13
To interest account, coin	245,413 49		By silver coin	73,509 20
	6,232,890 00		* * * *	
Less:			On hand, 5 per cent. notes and interest	1,086 50
Due O. E. account $2,250 55			On hand, $7\frac{3}{10}$ coupons	850 42
Due D. A. account 1,137 12			Canceled gold certificates	1,960 00
	3,387 67			5,152,705 04
			Deficit	1,076,797 29
	6,229,502 33			6,229,502 33

SATURDAY, *May* 11, 1867.

JOHN JAY KNOX,
Special Agent in charge.

To Hon F. E. SPINNER,
Treasurer United States, Washington, D. C.

May and Whitaker deficit, New Orleans subtreasury.

Dr.	
To amount of defalcation May 11, 1867, as per statement of John Jay Knox herewith	$1,076,797 29
To amount of error in previous count of notes and coupons	282 18
To amount paid for internal-revenue stamps affixed to conveyances of T. P. May, &c.	250 00
To amount paid for protest fees	21 40
To amount paid for rent New Orleans and Carrollton Railroad	2,562 50
To amount paid for engineer of steamer Virgin	233 33
To amount paid for transferring steamer Virgin from New Orleans to New York	257 26
To amount of expenses incurred by collector of customs at New York on account of steamer Virgin	10,373 39
To amount paid for watchmen, fuel, auctioneers' fees, &c., paid at the department from February to September, 1870, on account of May property	1,363 31
To amount paid Chaffraix & Agar, account steamer Virgin	2,476 12
To amount paid for advertising sale of steamer Virgin	250 35
To amount of erroneous charges to the United States Treasurer by T. P. May and counter-entered in Treasurer's general account and charged to this account	6,703 36
To amount paid Lieutenant Bury, through First Auditor's Office	45 00
To amount advanced by the United States for payment of mortgage interest, &c., on May property	27,216 59
To amount of T. L. Maxwell's receipt for tax on May property	519 36

* MEM.—Whitaker says that the note of Graham for $600,000 and the bills of exchange for $600,000 are one and the same thing. May has Graham's power of attorney.

J. J. K.

May and Whitaker deficit, New Orleans subtreasury—Continued.

DR.	
To amount paid Auditor Wickliffe for convention tax and fees	$63 20
To amount paid T. L. Maxwell for certificates and charges in the case of R. Hunt *vs.* T. P. May	351 29
To amount paid F. C. Mahan for taxes	190 00
To amount paid C. T. Walsh, auctioneer, for advertising, commissions, &c	1,078 35
To amount paid for advertising, catalogues, &c	849 50
To amount paid for arranging and cleaning house and furniture, making inventories, clerk-hire, labor, commissions on sales, &c	472 26
To amount of charges for sale of real estate	2,293 26
To amount paid A. Hero, jr., notary public, to pay taxes, &c	764 75
To amount paid for repairs and care of May property	172 00
Total	1,135,586 05
CR.	
By amount of Harrison's note found in Whitaker's box and paid	10,000 00
By amount of cash items found in box and collected	7,575 80
By amount of A. S. Mansfield's check, on Bank of Commerce, collected	8,000 00
By amount of T. P. May's check, on First National Bank of New Orleans, currency, $67,000; gold, $20,000, at 1.35 per cent., $27,000	94,000 00
By amount realized from Whitaker's assets	909 75
By amount of premium on gold in excess of 1.35 per cent	375 00
By amount of proceeds of sale of New Orleans and Carrollton Railroad (turned in by T. P. May)	295,372 46
By amount of proceeds of sale of steamer Virgin (turned in by T. P. May)	9,800 00
By amount advanced by purchasers of New Orleans and Carrollton Railroad to defray certain expenses incurred in its sale, &c	257 26
By part of the proceeds of sale of May house	7,166 66
By amount realized from sale of household furniture contained in May house	4,722 60
By amount realized from sale of May's books	573 15
By amount realized from notes with interest for May property	15,941 84
By amount balance of deficit	680,891 53
Total	1,135,586 05

TREASURY OF THE UNITED STATES,
Washington, D. C., April 20, 1878.

SIR: I have the honor to acknowledge the receipt of a copy of Senate resolution of April 16, 1878, requesting the President to inform the Senate in regard to W. R. Whitaker, who recently presided in the superior criminal court of the parish of Orleans, as to whether he was formerly employed as assistant treasurer at New Orleans; if so, during what period of time, and whether, in said capacity, the said Whitaker is a defaulter to the United States, and to what amount; being so much of said resolution as pertains to this office, and upon which report is requested.

In reply I have to state that William R. Whitaker was assistant treasurer of the United States at New Orleans, La., in 1866 and 1867; that his first statement of account rendered to this office is dated October 15, 1866, and his last one May 10, 1867; that the amount of the deficit or default in his office on the 11th of May, 1867, was found to be $1,076,797.29, and that the said deficit or default had been reduced to $680,891 53 on April 15, 1878.

Very respectfully,

JAS. GILFILLAN,
Treasurer United States.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., April 22, 1878.

SIR: I have the honor to acknowledge the reference made by you of a copy of a resolution of the Senate, inquiring if William R. Whitaker was formerly employed as collector of internal revenue, or assistant

treasurer of the United States, at New Orleans, La.; if so, the period of his services, whether he defaulted in either of said capacities, and, if so, the steps taken to recover the same.

William R. Whitaker was appointed a collector of internal revenue for the first collection district of Louisiana, and held the office from December 12, 1863, to April 9, 1865. He gave two bonds, the first dated December 12, 1863, in a penalty of $100,000, and the second dated April 7, 1864, in the same penalty.

On the 5th of February, 1872, treasury transcripts, showing him to be in default as such in the sum of $78,724.60, were forwarded to the United States attorney at New Orleans, La., for suit.

The United States attorney returned the papers, stating that as the late collector gave two bonds, he wished the transcripts to show the amount due under each. The First Comptroller, after examination, decided that it was impossible to divide the account as requested. On the 19th of February, 1874, suit was commenced in the United States circuit court for the district of Louisiana.

A supplemental adjustment of the account was made after the commencement of suit, reducing the balance claimed to the sum of $17,000.39; and, on the 7th of February, 1878, a final adjustment was made, still further reducing the balance to the sum of $11,182.06. When the final adjustment was transmitted to the United States attorney, instructions were given to press the case to trial without further delay. No trial, however, has yet been had.

The dockets of this office also show that William R. Whitaker held the office of assistant treasurer of the United States at New Orleans, La., from September 18, 1866, to July 1, 1867. He gave bond as such on the 14th of February, 1867, in a penalty of $200,000. As such he defaulted to the United States in the sum of $1,076,797.29. Suit for its recovery was commenced in the United States circuit court for the district of Louisiana, on the 9th of January, 1868. The case was continued till the November term, 1872, when, on trial, a judgment was rendered in favor of the defendant.

Mr. William Grant, the special counsel employed in this case, states that, at the trial, the jury probably based their finding of fact on the act of settlement between late assistant treasurer May and the United States, whereby the debt due to the government was discharged by an assignment of all May's property. There was, he alleges, no error in the verdict, and no bill of exceptions asked for. He also states that all the defendants were insolvent.

Respectfully,

K. RAYNER,
Solicitor of the Treasury.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE,
April 19, 1878.

SIR: I have the honor to acknowledge your reference of yesterday to this office of a copy of the resolution of the United States Senate, of the 16th instant, in relation to W. R. Whitaker, and requesting the report of this office on so much of the resolution as pertains to Mr. Whitaker's employment in the internal-revenue service.

In reply I have to state that William R. Whitaker held the office of internal-revenue collector in the first district of Louisiana from December 12, 1863, to April 9, 1865, and that in the adjustment of his account as such collector to the close of his said term of service, as per report No. 9644, a balance has been found against him of $11,182.06.

In the month of December, 1872, authenticated transcripts of Mr. Whitaker's account were sent from this office to the Solicitor of the Treasury, with a request that suit be instituted on his official bonds for the recovery of the balance standing against him.

This office is not now informed of the subsequent proceedings in the case, or of its present status.

The copy of the resolution referred as aforesaid is herewith returned to you.

Very respectfully, yours,

A. G. PORTER,
Comptroller.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

DEPARTMENT OF JUSTICE,
Washington, April 30, 1878.

SIR: I have the honor to acknowledge the reference by you of the resolution of the Senate by which the President is requested to furnish certain information in regard to the liabilities of W. R. Whitaker, arising under his administration of the office of collector of internal revenue and of assistant treasurer at New Orleans, and as to the measures which have been taken by the government to enforce the same.

I understand that the facts and circumstances under which the defalcation originated will be communicated to you by the Secretary of the Treasury, as well as all information touching the institution and effect of civil proceedings which, under the more immediate direction of the Solicitor of the Treasury, have been had in consequence.

To the inquiry, as far as it relates to the criminal proceedings instituted against Whitaker in this connection, I am able to furnish the following facts:

June 29, 1867, three indictments, numbered 5283, 5284, and 5285, were filed against William R. Whitaker, for embezzlement of public money during October, November, and December, 1866. Indictment No. 5285 was tried, and, May 22, 1869, a verdict of "not guilty" was entered, P. H. Morgan, esq., United States attorney, representing the government.

Upon the qualification, April 23, 1870, of A. B. Long, esq., as United States attorney—because of the fact that he had before acted as counsel for the defendants—Mr. William Grant was appointed by concurrence of the then Secretary of the Interior (under Stat. of 1856, c. 124, § 14), as special attorney in thirteen cases named, and record of such appointment made (Justices Bradley and Wood presiding) in the United States circuit court for Louisiana, June 6, 1870.

The cases in which Mr. Grant was thus authorized to appear for the government included the criminal cases against Whitaker.

Under date of April 10, 1877, I received from Mr. Grant a communication in which he stated that there were upon the docket three indictments, numbers 5283, 5284, 5285, against Whitaker; that indictment No. 5285, for embezzling as United States treasurer $1,058,421.74, had been tried, and upon trial Whitaker had been acquitted; that the re-

maining indictments were for the same offense as to particular sums of money, apparently a portion of the larger sum for the embezzlement of which he had been tried and acquitted; that the last two indictments appeared to have been found with the object of describing more particularly the sums included in the first.

Upon this statement of facts Mr. Grant expressed his opinion that it was not advisable or proper to try the indictments pending; that no conviction could be had upon them, and further asked that authority be given him to dismiss them.

April 14, 1877, I replied to Mr. Grant directing him as to Whitaker's cases, and as to another (a case against one Easin, distinct from Whitaker's, and which had been the subject of a separate letter), to consult with the district attorney, and if it should appear to him and to the district attorney advisable to enter a *nolle pros.*, it was left to their discretion to do so.

This letter Mr. Grant forwarded to Geo. S. Lacey, esq., United States attorney, with a note that if he, Mr. Lacey, concurred, the indictments named would be dismissed accordingly.

Mr. Lacey returned this with a request that Mr. Grant would give the reasons for the course proposed by him.

These reasons were expressed by indorsement as follows:

Whitaker was indicted for embezzling $1,058,453.44; 2d, for embezzling $13,000 of this principal sum; 3d, for the whole sum again in separate counts for different parts of this principal sum.

He was acquitted on May 22, 1869, on the first indictment. The acquittal, in fact, covers the *whole charge*, and the accused should not be tried again for the same offense in detail. In *my view* this acquittal is a good bar to the other cases.

WM. GRANT, *Special Attorney.*

APRIL 19, 1877.

Mr. Lacey thereupon, the same day, returned it to Mr. Grant, and referring to my letter of April 14, above mentioned, says:

For the reasons stated, concurring in opinion with the special attorney, I deem it advisable to enter a *nolle prosequi* as against William R. Whitaker. The motion to *nol pros.* to be accompanied by this assent.

GEO. S. LACEY,
United States Attorney District of Louisiana.

On the 19th of April, 1877, there were entered on the minutes of the court the appropriate orders dismissing indictments numbered 5283 and 5284.

It may be proper for me to add that at the time of the receipt of Mr. Grant's letter of April 10, 1877, no full reports in regard to these indictments were upon file in this department. The prosecution had apparently been undertaken in accordance with instructions from the Treasury Department, and its conduct did not appear to have been specially directed from this office. When, therefore, Mr. Grant desired particular instructions in the matter, my knowledge of the case depended upon the account of it contained in his letter. Upon the facts therein stated, it seemed to me proper that the disposition of it should be left to his own discretion fortified by that of the United States attorney for the district. Upon the account then and since given in relation to these indictments, I have no reason to doubt that these officers exercised their discretion wisely.

Very respectfully, your obedient servant,

CHAS. DEVENS,
Attorney-General.

The PRESIDENT.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 71.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of April 25, 1878, information in relation to the improvement of the ship-channel at the entrance of the harbor of Charleston, S. C.

MAY 8, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 4, 1878.

In compliance with the resolution of the Senate, dated the 25th ultimo, requesting information concerning the practicability and cost of constructing permanent works of improvement for the ship-channel at the entrance into the harbor of Charleston, S. C., the Secretary of War has the honor to transmit to the United States Senate a report of the Chief of Engineers and copy of a report of Lieut. Col. Q. A. Gillmore; also a copy of a preliminary report of a board of engineers to whom the project of Colonel Gillmore was referred.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 3, 1878.

SIR: I beg leave to return herewith the resolution of the Senate of the 25th April, 1878, viz, "That the Secretary of War be requested to communicate to the Senate any information in his department concerning the practicability and cost of constructing permanent works of improvement for the ship-channel at the entrance into the harbor of Charleston, S. C.," referred to this office for report, and, in compliance therewith, to submit the inclosed copy of a report on the subject recently received from Lieut. Col. Q. A. Gillmore, Corps of Engineers, in which a project for the permanent improvement of the channel of entrance into Charleston harbor by means of low jetties, with a general estimate of their probable cost, is presented.

A copy of the preliminary report of the board of engineers to whom his project was referred for consideration is also submitted.

I concur in the views of the board "that the channel over the bar can be improved to a probable depth at mean low-water of twenty-one feet by the use of jetties, submerged in whole or in part, and by a mode of

construction very gradual in its progress, which will admit of such modifications in the lengths and heights of the jetties as experience shall dictate."

I further concur in the view "that the project adopted should disturb to the least possible degree the present regimen of influx and efflux over the bar."

The board reports that the estimated cost of the proposed improvement will vary, according to the extent of the project which may be adopted, from $1,800,000 to $3,000,000.

Lieutenant-Colonel Gillmore recommends the annual appropriation of about $500,000 in four successive years, a recommendation in which I concur.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

PERMANENT IMPROVEMENT OF THE CHANNEL OF ENTRANCE INTO CHARLESTON HARBOR, SOUTH CAROLINA.

UNITED STATES ENGINEER OFFICE,
New York, March 9, 1878.

GENERAL: I have the honor to submit a project, hereinafter described, for the permanent improvement of the channel of entrance into Charleston Harbor, South Carolina, by means of low jetties, with a general estimate of their probable cost, accompanied by two sheets of drawings, designated respectively as Plate I and Plate II.

THE CHARLESTON BAR.

The bar which stretches bow-shaped across the entrance into Charleston Harbor, from Sullivan's Island on the north to Folly Island on the south side, has not varied much in either location, general direction, or magnitude, within the period by any trustworthy knowledge which we possess on the subject.

In the year 1852 a commission, composed of Prof. A. D. Bache, Superintendent of the United States Coast Survey; Lieutenants J. N. Maffitt, M. F. Maury, and C. H. Davis, United States Navy; and Lieut. J. D. Kurtz, United States Army, in a report on Charleston harbor and bar, made with special reference to works of permanent improvement, stated that a comparison of the chart of 1780, published in Des Barre's Atlantic Neptune, with those of 1821, 1825, and 1851–'52, "shows that according to the earliest records the bar of Charleston has varied comparatively but little in extent, direction, or in distance, from the mouth of the harbor."

Measured along its crest, or line of least depths, the bar is ten miles in length, its north end on Sullivan's Island being close up to the entrance or throat of the harbor, while its south end, resting on Folly Island, is six miles distant therefrom. Its average width between the 18-foot curves is about $1\frac{3}{4}$ miles.

In many places the highest points of the bar are only 3 to 4 feet below the level of mean low-water, although the average depths along the crest are considerably greater.

The main central body of the bar, lying near due north and south, is nearly straight for a length of over five miles, has its crest parallel to

the main shore south of the entrance and at a mean distance of about two miles from it, and is not at the present time, and, so far as we know, never has been traversed by practicable ship-channels.

The northern and southern extremities of the bar are formed by rather sharp curves, which connect the straight portion already mentioned with the shore above and below the harbor.

So far as we can now ascertain there appears never to have been less than four nor more than six ship channels across the bar at any one time. The greatest depth of water has sometimes been found in one channel and sometimes in another, being rarely less than 12 feet, or more than 13½ feet, at mean low tide.

The channels, whether four or more, have always existed in two groups or clusters, one in the northern and the other in the southern curved portion of the bar, and there has always been a deep and broad anchorage inside the straight reach of the bar abreast of Morris Island.

This anchorage, sometimes called the "main channel" and sometimes the "outer harbor," varies in width from one third to two thirds of a mile between the 18-foot curves, and in maximum low-water depths from 20 to 45 feet. The direction of its central line is about north and south, and its length from the throat of the harbor between Morris and Sullivan's Islands to its southern terminus, where it spreads out in various channels and shoals in crossing the bar, is fully five miles. At the extremities of this outer harbor or basin, several miles apart, are found the two groups of channels already mentioned, the most northerly group being directly in front of the gorge of the harbor.

The bar is essentially a drift-and-wave bar, produced in part by the upheaving action of the waves when they approach the shore, and are converted by breaking into waves of translation, and in part by drift-material carried along the coast by surf-currents, especially by those produced by northeast storms. The peculiar location of the bar, largely to the southward of the gorge of the harbor, and the conditions under which a very large proportion of the ebb-flow is diverted from its most direct path, and forced to skirt the main coast for several miles before it can find a passage to the sea, indicate the controlling power of these storms.

The material composing the surface of the bar closely resembles that usually found on the sea-shore between high and low water in that section of the country, being shells and fragments of shells, or siliceous sand, or a mixture of them all. It is easily thrown into suspension by waves, and is moved by a moderate current.

On the north end of the bar five borings were made in order to determine the character of the substrata. The points selected for boring, and the results obtained, are indicated on the accompanying drawings.

It will be seen that below the surface there are some layers or lumps of mud, as well as of mud mixed with sand, and mud mixed with shells.

All the channels which traverse the bar are, and, so far as we know, always have been, ebb-tide channels, produced and maintained by the scour of the ebb-current, except Beach (formerly Maffitt's) Channel, the most northerly of them all, which lies close to Sullivan's Island. This is a flood-tide channel, possessing the usual characteristic of such channels, that their least depths are always found near their inner ends, and therefore in comparatively quiet water. Another distinguishing feature of such channels is that from the cross-section of shoalest soundings inward, toward the harbor, the descent into deep water is sharp and sudden, while outward, toward the ocean, it is gradual and gentle.

The North or Cumberland Channel at the entrance into Cumber-

land Sound, Georgia, and the Coney Island Channel of New York Harbor are of the same character.

In speaking of the preponderance of the flood over the ebb in Cumberland Channel, in my report on the jetty system as applied to the entrance into Cumberland Sound, Georgia, submitted April 15, 1876, I say:

> The effect is to make the inner slope of this part of the bar very steep; the sand which is rolled along by the flood-current on the bottom of the outer slope is first brought to rest in the deep water of the inner basin. The ensuing ebb-current, which receives its velocity and direction from the large volume of Cumberland Sound, sweeps the inner slope of the northern shoals longitudinally, and takes up this sand and carries it out by the Amelia Basin, depositing it upon the main bar. The channel next to Cumberland Island is therefore a flood-tide channel, like the Sullivan's Island or Beach Channel in Charleston Harbor. They both possess in a marked degree the steep inner slope which invariably characterizes a channel maintained by the flood-tide, which having once passed in is so much diverted in its direction on the ebb, by the axial line of the tidal basin, that it cannot flow out in full volume through the same opening, but sweeps past its mouth in its passage to some more direct outlet.

Beach Channel was gauged during the months of May and June, 1876, when it was found that on a section taken 500 yards east of the inner end of the channel, at the Bowman jetty, the volume flowing out during an entire ebb between the low-water line on Sullivan's Island and the five-foot curve on Drunken Dick Shoal, amounted to only 48.8 per cent. of the volume flowing in during an entire flood through the same section.

On a section taken 930 yards east of the Bowman jetty, between the low-water line on Sullivan's Island and the 10-foot curve on Drunken Dick, the volume of ebb amounted to 52½ per cent. of the flood.

The following table shows the mean low-water depths in the several channels across the Charleston bar since 1821, taken from Coast Survey charts and other sources of information at command. Within that period Beach Channel has not changed at all in location or direction, except very slightly at the "bulkhead," due to the shortening of the jetty. From 1856 to 1870 there was very little change in either the general direction or position of the North or Swash Channels. Between 1856 and 1870 both the Pumpkin Hill Channel and the main ship-channel moved about half a mile to the southward, and the Lawford Channel disappeared entirely:

Survey—by whom made.]	Date of chart or survey.	Least depth at mean low-water in—					
		Beach or Maffitt's Channel.	North Channel.	Swash Channel.	Pumpkin Hill Channel.	Main ship-channel.	Lawford Channel.
		Feet.	*Feet.*	*Feet.*	*Feet.*	*Feet.*	*Feet.*
Lieutenant Sherburne, U. S. N	1821	6	.....	.....	.....	11	10
United States Coast Survey	1850	7	8	.....	.....	.....	.....
Do	1852	8	8	8	.....	10.6	8
Do	1854	10.25	.....	.....	.....	.....	.....
Do	1855	11	.....	.....	.....	.....	.....
Do	1856	*11	*8	*9	†12	†11	*7
Captain Cullum, United States Engineers	1857	12	.....	.....	.....	.....	.....
United States Coast Survey	1858	*11	*8	*9	†12	†11	*7
Do	1866	†12	shoaled	†12	12	†12	shoaled
Do	1870	†12	†9½–10	†12.5	11	†13	...do ..
‡Captain Ludlow, United States Engineers	1871	11	.....	.....	12	.....	.....
‡Captain Post, United States Engineers	1877	11	.....	.....	.....	.....	.....

* Least depth given by sailing directions on chart.
† Least depth shown in channel on chart.
‡ Under direction of Lieut. Col. Q. A. Gillmore, United States Engineers.

NOTE.—In February, 1875, there was a narrow channel in Beach Channel of 14 feet depth at mean low water, with 11-foot lumps.

CAPACITY OF THE TIDAL BASIN.

The area of the tidal basin formed by Charleston Harbor, as computed from the Coast Survey chart and Mills's Atlas of South Carolina, is about 15 square miles. This area is assumed to be filled during each mean flood-tide by a layer or prism of water 5.1 feet in height above the mean low-water level. In addition to this the adjacent reaches of the rivers named will be filled above their low-water stage by flood and back waters, which at the period of slack water will form in each stream a wedge-shaped mass resting on the sloping low-water line of the river, and extending up to a point where the influence of the tidal wave ceases to produce a rise and fall of the surface of the water. The lower portions of these wedge-shaped masses will flow out through the gorge of the harbor on each ebb-tide.

From these data it is estimated that the average discharge through the throat of the harbor between Sullivan's and Morris Islands, on each ebb during the period of mean rise and fall of tides, amounts to a little over 3,655,443,686 cubic feet. Of this volume only about 76,571,000 cubic feet is supplied by the land drainage, on the assumption that one-half the rain-fall reaches the sea. This estimate is believed to be not too large, in view of the fact that the streams are short and in close proximity to the points of discharge.

For two or three days during the period of spring-tides, the average ebb-discharge will be augmented to about 4,228,846,000 cubic feet.

The neap discharges, being in smaller volumes than those pertaining to mean tides, require no special mention, as any temporary decrease of scouring power in the new channel beyond the jetties resulting therefrom would be of short duration. Even if slight shoaling ensued during this period, the maximum depths established by mean and spring tides would be restored on the return of these tides.

The mean duration of the ebb-flow is taken at 6 hours, that being the average of a number of observations taken by Civil Assistant George Daubeney, in 1870 and 1871, the longest flow being $6^h\ 20^m$, and the shortest $5^h\ 25^m$.

The average ebb-discharge per second through the gorge of the harbor during the period of mean rise and fall of tides is therefore 169,233 cubic feet ($\frac{3655443686}{21600}$), and during the period of spring-tides 195,780 cubic feet ($\frac{4228846000}{21600}$), the average rise and fall at ordinary spring-tides being 5.9 feet. No account is here taken of the somewhat longer duration of ebb-flow at average spring-tides.

During very high spring-tides the discharge will be much larger. With a rise and fall of 10.3 feet (which has actually occurred), the prism amounts to about 7,382,562,000 cubic feet, equivalent to 341,780 cubic feet per second; nor will this show the total discharge, since the marshes will be flooded, and their area being estimated at 8 square miles, every layer of water over them 3 inches thick will add 55,965,870 cubic feet to the prism, or 2,590 cubic feet to the average discharge per second.

It has not been deemed expedient, or likely to give trustworthy results, to attempt to gauge the flow through the gorge of the harbor by means of current-velocities. Those taken some years ago between Forts Sumter and Moultrie, with a view of locating channel torpedoes, proved the existence of eddies and counter-currents, and other irregularities of flow, to such degree, especially near the Sullivan's Island side, that the requisite accuracy seemed hardly obtainable by this method.

There is nothing specially exceptional in this, for it is known that

abnormal conditions often characterize the flow of water through the gorge of a large tidal basin.

It is stated by Mr. D. Stevenson that at Cromarty Firth, where the waters pass to and from the sea through a narrow gorge, of which the width is about 4,500 feet and the depth about 150 feet:

> The mean velocity due to the column of water passing this gorge, as deduced from the observed surface-velocity, was not sufficient to account for the quantity of water actually passed during each tide, as determined by measuring the cubical capacity of the basin of the Firth. This led to the observation of the under-currents through the gorge by means of submerged floats, and it was found that during flood-tides the surface-velocity was 1.8 miles per hour, while at the depth of 50 feet the velocity was not less than 4 miles per hour, being an increase of 2.3 miles per hour. During the ebb-tide the surface-velocity was 2.7 miles per hour, and at 50 feet depth it was not less than 4.5 miles per hour, being an increase of 1.8 miles per hour.

Anomalous variations and irregularities between the surface and the subcurrent have also been found to exist in the harbor of San Francisco, Cal., and elsewhere.

For the foregoing reasons, mainly, it has been thought best to use the cubical capacity of the tidal basin and the rain-fall upon the drainage-area in estimating the average volume of water which flows out and in through the gorge of Charleston Harbor.

PLAN OF IMPROVEMENT RECOMMENDED.

It is proposed to construct two jetties, one springing from Morris Island and the other from Sullivan's Island, converging toward each other in such manner that their outer ends on the crest of the bar shall be half a mile apart. The outer ends of the two jetties will rest respectively upon the shoals lying to the northward and southward of what is known as the north channel, that being the middle channel of the north group of three channels, and having its line of deepest water located more nearly than either of the others upon the prolongation of the axis of deep-water flow through the gorge of the harbor between Cumming's Point and Fort Moultrie.

Assuming for the purposes of discussion the sea ends of the jetties to rest respectively at X and Y, it seems, in some measure, immaterial whether they be established upon straight lines as shown at AX and BY, Plate I, or upon curved lines; and if curved, whether the convexity be turned toward the central channel as at CX and DY, or from, it as at EX and FY. In either case, if kept at the proper heights, they will produce an ebb-flow through the gap able to maintain a deep channel through the bar. Neither the straight jetties, however, nor more especially those with their convexity turned away from the channel, act as training-walls to guide the outflowing water. The curved jetties convex toward each other, being less open to this objection, are the ones adopted in this project.

The north jetty starts from a point on Sullivan's Island 1,800 yards east of Bowman's jetty. The half next the shore is covered to a radius of about 1½ miles, the outer half being very nearly a straight line. The total length of this jetty from C to X is 7,450 feet, and its general direction is southeast.

The south jetty, having a total length of 11,650 feet from D to Y, starts from Morris Island at a point about 650 yards from Cumming's Point, its general direction being east. The shore end is curved to a radius of about 3 miles for a little more than one-half its entire length, while the half next the sea is nearly straight, as in the case of the north jetty.

The specified length of the jetties is taken for purposes of discussion. As will be seen hereafter, they would not be able to produce a channel of the requisite capacity through certain materials which may be encountered in the bar, although they would be expected to maintain such a channel if once established.

The outer ends of the two jetties slightly converge toward each other as they approach the crest of the bar, and are intended to act as training-walls for a distance, in each case, quite equal to half its entire length. These portions lie in the direction of the flood-currents, and may be built to any height without obstructing the inflow. For fully one-fourth of their entire length the sea ends could be carried above the level of high-water, so as to be visible at all stages of the tide. The inner portions, crossing the Beach and main channels, respectively, might perhaps be kept low enough to allow the smaller classes of vessels to pass over them.

One feature of the design is to maintain the bar in its present general location, with such moderate increase of magnitude as may be expected to result from concentrating upon a gap one-half to five-eighths of a mile in width a portion of the water which is now dispersed over a width of 10 miles.

The complete success of the works is believed to depend on three important conditions, which they are expected in great measure to satisfy, and which have been kept in view in preparing the design, viz:

1. *They should not impede the inflow to such degree as to prevent the tidal basin being filled as now at every influx of the tidal wave.*

To this end the inner half of each jetty, more especially its central portion, located in deep water across the thread of the current, is kept several feet below the water. The outer half, being nearly parallel to the direction of the flow, is built higher, and the sea end, for a distance of several hundred feet, may be carried high enough to be visible at all stages of the tide.

2. *They should control the outflow to such degree and in such manner that a channel of the required depth will be maintained through the bar.*

To this end, although a large portion of the *surface flow* will spread out over the tops of the jetties and thence over the bar, the *central flow*, throughout the entire depth along the axial line of the gorge between Sullivan's and Morris Islands, is aided in its natural tendency to reach the sea along the prolongation of that line by the opening left for it between the jetties. The *bottom-flow* through the gorge of the harbor is deflected on converging lines by the jetties, and is therefore forced in a measure to concentrate itself in, and flow out through, the gap between them. The outer half of each jetty and the adjacent portion of the shore end act as a training-wall for this flow.

3. *They should not to any considerable extent cause a movement seaward of the main body of the bar; that is, the general position of the bar should be independent of the effects produced between and beyond the heads of the jetties.*

It is believed that this condition will be secured by making the shore ends of the jetties low for at least one-half their length, or throughout those portions which cross the thread of the current in deep water, so as to allow the tide to ebb and flow somewhat freely over them. The effect of high jetties, with a correspondingly wide gap between them to allow a full influx of the tide, would tend to transfer the gorge of the harbor from its present position to the sea ends of the jetties and move the shore line out to that point, by causing a filling in of the exterior angles between the jetties and the shore. After reaching this stage, a drift-

and-wave bar would probably be found to the seaward of the present bar, in front of the jetties, rendering it necessary to extend them in order to cut a passage through it.

It seems essential, therefore, that the agencies which maintain the present bar should remain in as full force as possible, consistent with the requisite concentration of outflow between the jetties.

The probable effects will be that the bar will be raised somewhat throughout its entire length, the waves will break upon it more frequently than now, and considerable shoaling will, of course, take place in Beach Channel and in all the southern group of channels. But it is believed that the important condition of keeping the bar generally in its present position will be secured.

The drift-material carried along the coast by surf-currents, as well as the sand thrown up by the breakers on the north and south shoals, instead of lodging in and filling up the exterior angles between the jetties and the shore, as in the case of high jetties, will be disposed of in a harmless manner.

For example, a heavy northeasterly storm, producing breakers along the north shoal and strong southerly surf-currents along the shores of Long and Sullivan's islands, would put in motion a large quantity of material, a portion of which would be carried in by the flood-currents over the north jetty and through Beach Channel, coming to rest in the deep water of the main channel. It would next be taken up by the ebb-current and rolled out to sea between the jetties. Beyond the jetty-heads it would encounter the littoral ebb-current, moving to the southward with a velocity accelerated by the storm, by which it would be again carried in a southwesterly direction until finally, left to the action of the south breakers, it would be either deposited temporarily upon the south shoal or carried still farther to the southward. This action, which would be incessant during the continuance of the storm, is illustrated in Figure 1, Plate II.

The action of a southerly storm would be the reverse of this. In either case some drift-material would be carried by waves and surf-currents around the jetty-heads, and would subside in the deep water between them, to be swept out by ensuing ebb-currents, and disposed of to the northward or southward, according to the direction of the storm.

This movement of sand was referred to in my report on the improvement of the Fernandina Bar, submitted April 15, 1876, from which the following extract is made:

> As a moderate assumption, a northeaster of three days' duration might be expected to lower the north shoal 4 inches within the area covered by the breakers. The greater part of the eroded material, amounting to upward of 516,000 cubic yards, would doubtless be distributed along the south shoal during the progress of the storm. If the waves should subside or a southerly or southeasterly storm set in before the bar channel had returned to its nominal condition, the material subsequently carried out would not reach the south shoal, but in the former case would remain near the outlet on the outer slope of the bar, and in the latter would be carried back by the waves to the north shoal. If as much as one-fourth of it remained in the bar channel between the inner and outer 18-foot curves, a few severe storms such as frequently occur within the period of a single month would entirely destroy it, by filling it up to the level of the shoal on either side.
>
> It would appear, therefore, that millions of cubic yards of the material composing the bar might be shifted back and forth from one side of the channel outlet to the other during a single season, without causing injury to the channel by shoaling, and without producing any changes in the form and location of the bar itself, that might not entirely escape the notice of the most careful surveyor. And yet this shifting of material of which no evidence may be left behind should enter as an important, if not a controlling, function in the project of the engineer, because the useful life of his works is more or less dependent thereon.

As no works can be expected to stop this movement of drift-material for any great length of time, they should, if practicable, accommodate themselves to it under conditions of a permanent character. Those proposed are designed to do this, by allowing the drift-sand to move from one part of the bar to the other in much the same manner as now, never remaining in the jetty channel longer than a few tides, and never finding a resting-place anywhere that the next storm may not disturb

PROBABLE EFFECT PRODUCED BY THE JETTIES.

An attempt is made below to determine by the use of appropriate formulæ the principal phenomena of the ebb-flow, after the jetties shall have been constructed and an enlarged water-way of the greatest self-maintaining area has been established between them, and the hydraulic equilibrium has been restored.

The jetties in this discussion are first assumed to occupy the lines X and DT, Plate I, with their respective crests established at the varying heights shown by the longitudinal sections CX and DY on Plate II, the sea ends being half a mile apart.

The north jetty crosses the deep water of Beach Channel at the level of 12 feet below mean low-water, the crest being held at that level for a length of 650 feet, whence it rises gradually by a series of gentle slopes to high-water at each end. On the sea end the part carried to high-water level is 1,500 feet long.

The south jetty, designed on a similar plan, crosses the main channel on a level 15 feet below mean low-water, the seaward end for a length of 2,000 feet having its crest at high-water.

The sectional area of the gorge profile between Cumming's Point and Sullivan's Island is as follows:

	Square feet.
Area of low-water section	159,550
Area of high-water section	195,350
Mean ebb-tide area	176,600

The width of the surface at half tide, corresponding to the mean ebb-tide area is 6,825 feet, and the wetted perimeter 6,927 feet. The hydraulic radius is, therefore, 25.46 feet.

At mean low-water the surface width is 6,750 feet, the wetted perimeter 6,851 feet, and the hydraulic radius 22.29 feet.

The area inclosed between the line of gorge at Cumming's Point and that of the proposed jetties and gap is 2.16 square miles.

The average discharge per second across the sites of the jetties and through the gap between them is, therefore, 183,451 cubic feet $\left(\frac{3,655,443,886 + 307,108,434}{21,600}\right)$ or 14,218 cubic feet more than the amount flowing out at the gorge.

The following are the sectional areas in square feet now existing on the lines proposed for the jetties and gap:

	Low water.	Mean half tide.
	Square feet.	*Square feet.*
Line of north jetty	59,900	78,880
Line of south jetty	171,720	201,365
Gap	22,840	29,572
Totals	254,460	309,817

For the following calculations the D'Aubuisson-Downing formula will be used, not because it is the best, but mainly because it is very simple and easy of application. It is, moreover, believed to answer very well in cases of broad open streams.

The formula is—

$V = 100 \times \sqrt{s} \times Vr$, in which
V = velocity in feet per second.
S = slope, or ratio of horizontal length to vertical descent.
r = hydraulic radius in feet.

In the gorge at Cumming's Point the grand mean of all the velocities is .958 feet per second $\left(\frac{169.233}{176.600}\right)$.

The grand mean of all the velocities with which the water passes through the various compartments of the present section along the line of the jetties and gap is 0.59212 feet per second $\left(\frac{188.451}{309.817}\right)$.

The mean hydraulic radius of this aggregate section is 14.0322 feet $\left(\frac{309.817}{7.574.3+2.679.7+11.825}\right)$.

Therefore $V = 0.59212 = 100\sqrt{14.0322} \times Vs$.

$$\sqrt{s} = \frac{0.59212}{100 \times \sqrt{14.0322}} = 0.0015807$$

$$S = 0.0000024980.$$

On the assumption that this slope is the same throughout the section (which in point of fact is not precisely the case, and we have no data for making the necessary correction for the several compartments), the total average volume of discharge per second, amounting to 183,451 cubic feet, is distributed as follows, as determined by the various areas and hydraulic radii:

	Cubic feet.
Through present section on site of north jetty	39,418
Through present section on gap	15,227
Through present section on site of south jetty	128,806
Total as above	183,451

This must be assumed to represent the present distribution of the outflow per second through the section selected for the sites of the works and the opening between them at its narrowest point.

The changes of regimen which the jetties will tend to produce, and the area of the water-way which once established they would be expected to maintain between and beyond the sea ends, will next be considered.

The north jetty will reduce the half-tide area of the water-way from its present area of 78,880 square feet to 41,593 square feet, and the hydraulic radius from 10.41 feet to 7.59 feet.

The south jetty half-tide water-way will be reduced from the present area of 201,365 square feet to an area of 94,684 square feet, and its hydraulic radius from 17.03 feet to 10.77 feet.

These hydraulic radii are to be considered permanent, the crests of the jetties being supposed to be able to resist abrasion by the current.

In the gap, where alone erosion can take place, the present mean half-tide water-way is 29,572 square feet, and the mean low-tide area 22,840 square feet.

After the jetties shall have achieved their maximum scour, aided by dredging or other artificial appliances wherever clay-beds are encountered and the equilibrium of flow is resumed, the original general average slope S = 0.000004206 will be restored.

The aggregate average discharge per second before the jetties were built will also be restored.

From these premises the following average discharges per second are found:

	Cubic feet.
Across crest of north jetty	18,113
Across crest of south jetty	49,110
Total over the jetties	67,223

The balance of the discharge, amounting to 116,228 cubic feet per second (183,451—67,223), will go out through the gap between the jetties, where at present there is a mean half-tide area of only 29,572 square feet and a mean discharge of 15,227 cubic feet per second.

The formula already used gives for the average velocity through the gap:

$$V = 100 \times \sqrt{s} \times \sqrt{r}$$

Substituting the value $\sqrt{s} = 0.00.15807$, we have

$$V = 0.15807 \times \sqrt{r}$$

The value of r is unknown. The width of the gap being 2,640 feet, we have for the wetted perimeter, by General Abbot's rule 2,680 feet (2,640 × 1.015).

If A represent the unknown half-tide area of the gap in square feet, we have

$$r = \frac{A}{2.680}$$

and

$$v = 0.15807 \times \frac{\sqrt{A}}{\sqrt{2.680}}$$

The calculated average discharge through the gap per second being 116,228 cubic feet, we have

$$126{,}228 = A\,v = A \times \sqrt{A} \times \frac{0.15807}{\sqrt{2680}}$$

$$A = \frac{\sqrt[3]{(116.228 \times \sqrt{2680})2}}{0.15807}$$

A = 113,160 square feet.

The mean hydraulic radius at the gap will therefore be 42.22 feet $\left(\frac{113.160}{2680}\right)$ at mean half tide, or 39.71 at mean low-water. This implies very considerable mid-channel depths.

In the profile between Fort Sumter and Sullivan's Island, having a mean low-water area of 177,620 square feet, a width of 4,960 feet, and a hydraulic radius of 35.28 feet, fully 90 per cent. of the total area pertains to depths of 24 feet and upward, occupying a width of 3,540 feet, in which the maximum depth is 76 feet.

On the profile from Cumming's Point to the Bowman jetty, the low-water area is 159,550 square feet, the width 6,750 feet, and the hydraulic

radius 23.29 feet. The compartments of 24 feet depth or more form 80 per cent. of the whole section, and occupy a width of 3,000 feet, with maximum depths close up to 70 feet.

In the new channel between the jetty-heads, where the hydraulic radius is 39.71 feet, it may be expected that the area of depths of more than 24 feet will constitute a very large proportion of the total area of the gap, and that maximum depths of 75 feet and upward would be maintained in mid-channel.

The average velocity from which the general average slope is derived is, of course, less than the velocity that will prevail in the deep-channel compartments of the profile, since with unaltered slope the velocities in different portions of the profile may be considered to vary as the square root of depths. The grand average velocity in the profile between Cumming's Point and Bowman's jetty, with a mean hydraulic radius at half tide of 25.46 feet, is 1.28 feet, per second; in the 50-feet compartments the *average* velocity would be 1.77 feet per second; while during the second and third quarters of ebb the velocities will vary between 2 and 3 feet per second.

The bottom velocities will generally be but little less, to judge from the results of a great number of current observations made near Fort Sumter by Capt. William Ludlow a few years ago.

Of the effects that will be produced to the seaward of the jetties upon the outward slope of the bar by so large a volume of outflow, it is impossible to deduce from formulæ results upon which reliance can be safely placed. We know what kind of effects will ensue, but we have no precise measure of their intensity. The first and greatest difficulty met with is the want of trustworthy data concerning the rate at which the water, as it issues forth from the gap, will spread out and disperse over the descending outer slope of the bar, with a diminishing velocity and scouring power. For the purpose of discussion, it will be assumed that the currents having passed the jetty-heads will spread out in a fan-shaped area, at an angle of 30 degrees on each side, with the axis of the new channel. The chart seems to indicate that this angle is not too small. It is, however, largely conjectural.

Assuming, however, a total spread of 60 degrees, the width of the profile 1½ miles to seaward, through which the outflow from the jetties is supposed to pass, is 10,933 feet.

By adding the fan-shaped water-prism between the jetty-heads and the seaward profile to the volume of flow through the former, we find that the average volume passing through the outer profile will be 128,916 cubic feet per second.

The half-tide sectional area of the profile is found, by the method of calculation already employed, to be 172,312 square feet. Its wetted perimeter is 11,097 feet, its hydraulic radius at mean half-tide 15.52, and at mean low-water about 13, which implies more than ample mid-channel depths through the outer slope of the bar for vessels of the deepest draught.

As this outer profile is taken upon the seaward slope of the bar a little beyond the 18-foot low-water curve, the permanent depths first secured there—permanent because representing a restored equilibrium—can, of course, be increased at pleasure, and at a small relative cost, by the moderate extension of the jetties.

If the gap between the jetties be widened, the submerged portions must be raised to a greater average height, thus diminishing the area of water-way above them, in order that a channel of the same mean depths in the seaward profile near the outer 18-foot curve, above deduced

for a specified height, may be maintained. Considerations of cost furnish strong arguments for keeping the crest of the jetties low, as the expense of added height in jetties with side slopes increases much more rapidly than the height itself. For example, a wall 10 feet high and 10 feet wide on top, with slopes of 45 degrees, contains 200 square feet in cross-section, while a wall of the same width on top and only twice the height contains three times that area of cross-section. By doubling the height the quantity of materials required is therefore trebled in this case, and more must be still added to compensate for the increased subsidence caused by doubling the weight on the foundation. By trebling the height we get six times the area of cross-section.

With an opening between the jetties five-eighths of a mile wide, established by swinging the south jetty to the southward around its shore-end as a center until it occupies the line IZ, and leaving the north jetty located on the line CX, as before, it will be necessary to raise the submerged portions an average of about 14 inches higher than the crests shown on the longitudinal sections CX and DY, Plate II, in order to maintain in the seaward profile, 1½ miles from the jetty-heads, the same hydraulic radius deduced for the half-mile gap. Between the jetty-heads the hydraulic radius for the five-eighths-mile gap would be about 4.45 feet less than for the half-mile gap. Under both suppositions the sea-ends of the jetties rise to high-water level for a length of 1,500 feet on the north jetty, and 2,000 feet on the south jetty.

There seems to be little room for doubt that a channel of ample capacity having been once established through the bar, it will be permanently maintained by the jetties, and that the materials more or less constantly carried out by the current, especially during the prevalence of drift-producing storms, and immediately subsequent thereto, will not be deposited under conditions favorable to the formation of an exterior bar.

The outer slope of the bar, directly to the seaward of the jetties, will perhaps assume and maintain a salient form in consequence of the materials being first brought to a temporary rest at that point; but unless the main body of the bar to the northward and southward of the jetties also moves bodily to the seaward in a marked degree, in violation of all known or suspected laws, the movement of drift will go on substantially as at present, finding only a transient resting-place in front of the new channel, or upon any other portion of the bar.

Having assumed the width between the jetties and the points on the bar at which their sea-ends should rest, it is not claimed that the corresponding height capable of maintaining through the bar to deep water on the outside a channel of a specified capacity can be determined with precision by computations based on the use of any known formulæ. But it seems quite clear, with the large surplus of available water not needed between the jetties, that we can by first building them low throughout their entire length, and then raising them gradually to the required height, utilize the flow, and accomplish the desired results, not only with certainty, but with the greatest attainable degree of economy.

It will be expedient, from other considerations, to proceed gradually in raising the works to the requisite height. It will be seen from Plate II, containing a record of the borings, that at the point D, nearly in the axis of the new channel, and a little outside a right line joining the sea-ends of the jetties, a bed of "soft mud and sand" 7 feet in thickness is encountered at a depth of 5 feet below the bottom, and 17 feet below mean low water. It overlies a bed of sand 4½ feet thick. At E about 460 yards to seaward of the point D, and also in the line of the new channel, a layer or thin bed of sand, shells, and soft mud, only 1 foot

thick, is found 1 foot below the bottom, and 13 feet below low-water. At a depth of 6½ feet a 1-foot bed or lumps of stiff clay exists resting on 10½ feet of fine sand. At A, more than 1¼ miles inside the jetty head, and a little to the northward of the probable line of deepest water, a bed of tenacious clay is found 4 feet below the bottom and 18 feet below low-water, while outside the gap at F, about a half a mile in a southerly direction from D, no clay or mud is found until a depth of 28 feet below low-water is reached, and there it is only a foot thick, and rests upon 3 feet of "shells and sand."

These borings show that the material which may be found capable of resisting erosion and removal by the currents does not occur in continuous and regular strata, but apparently in detached sheets, lumps, and beds, varying greatly in thickness and in depth below the bottom, and below the water-level.

It is presumed that none of the materials which it would be necessary to remove in establishing a deep water-channel through the bar can be eroded and carried off by the currents except those designated in the table of borings as "shells," "sand," "soft mud," or a mixture of two or all of them. Whenever stiff clay is to be removed some method of dredging or harrowing will have to be adopted, and it may be necessary to resort to harrowing in aid of the natural scour, to get rid of some of the beds of mud and softer clays. The sand and shells will be carried out by the current.

When the jetties, supposed for the present to be built of riprap resting on a mattress of fascines, have reached their full length, or rather their assumed length, from the shores to the points X and Y, respectively, with heights throughout the submerged portions not much greater than may be deemed necessary to secure the foundations from injury by undermining, the lower sections should then be gradually built up until a sufficient flow is established between them to scour off the surface-layer of sand, shells, and soft mud, and lay bare the beds of stiff mud and clay between the heads of the jetties, and as far beyond them as possible, consistent with the safety of the works themselves. The greatest effect will naturally be produced along the center line, and the volume of flow should not be made large enough to cause any considerable scour along the faces of the jetties.

Dredging, if it becomes necessary at all, should begin along the line of greatest scour as soon as the removal of the clay by that method becomes practicable, and as greater depths are secured in this manner the jetties should be raised to higher levels.

The borings indicate that sooner or later, during this stage of progress, it will become necessary to determine in what manner the needed depths to seaward upon the outer slope of the bar can best be established. It may be done either by enlarging the area of the water-way between and directly in front of the jetties, so as to lengthen the outward reach of the scouring power, or by extending the jetties themselves further out on the bar with only moderate depths between them, thus carrying further to seaward the point at which divergence and consequent loss of power begin. In the degree to which the first method, if adopted, is carried into execution, will the jetties approach the heights shown in sections CX and DY, Plate II, and they could not theoretically attain and exceed those heights until the channel in the gap has a mean half-tide area of 113,160 square feet, and a hydraulic radius of 42.22 feet. This implies, as already stated, a deep central channel with maximum depths, which would perhaps be impossible of attainment at moderate cost by any known process of dredging or raking.

The boring at D in the line of the new channel indicates that very little dredging or raking would have to be done to reach a depth of 31 feet below mean low-water, there being only 6 inches of stiff clay to penetrate in that distance, and that is found at a depth of 28½ feet. At E, farther out on the same channel line, only 12 inches of stiff clay is encountered in a depth of 30 feet. Whether this material occurs nearer the surface, or in thicker beds at other points where its removal would be necessary to give the requisite water-way, cannot, of course, be known from the examinations that have been made. Very numerous borings taken near each other would be necessary before even a very general estimate could be made of the quantity of materials of different kinds that would require removal by other agencies than the natural scour, in order to attain any given area of water-way.

It is probable that the thin deposits of clay encountered in boring are only detached lumps or small masses that will be no obstacle to the prosecution of the work, but will settle down to lower levels as the sand is scoured away from around and beneath them. The existence of such lumps on the bottom of the inner harbor has been reported by divers.

For the purpose of this estimate, maximum mid-channel depths in the gap of only 31 feet at mean low-water will be adopted, because that depth appears to involve only a small outlay for dredging, and possibly none at all.

By fixing the crests of the submerged portions of the jetties at the requisite heights, we have the means of maintaining in this water-way average depths not much less than the maximum depths, thus producing a wide channel with moderate depths instead of a narrow channel very deep along the central line and shoal toward the sides. Under these conditions the hydraulic radius in the gap can be made comparatively large. It will be taken at 24 feet mean half-tide.

It appears from calculations based as before on an assumed divergence of 60 degrees in the ebb flow exterior to the jetty-heads, that a normal flow through the half-mile gap, with a hydraulic radius of 24 feet, cannot maintain a channel exceeding 21 feet in depth at mean low-water for a greater distance than about 5,500 feet beyond the heads of the jetties where the divergence begins. This would make the jetties 2,400 feet longer than the jetties CX and DY, already discussed, although their submerged crests would be considerably lower. The north jetty, if kept generally parallel to the bottom, would not exceed 1 foot in average height, its office being mainly to prevent the enlargement of the Beach Channel water-way by scour. The south jetty would have its submerged crest at 10.78 feet below mean low-water, if kept level throughout. Under these circumstances, with a 24 foot hydraulic radius in the gap, and corresponding hydraulic radii in the seaward profiles, on the supposed total divergence of 60 degrees, the original slope will be restored. The mean average ebb velocity through the gap will be 0.93 foot per second.

By raising their submerged portions above the calculated heights last mentioned greater ebb flow and velocities would be established in the gap, with correspondingly increased power and outward reach, and, therefore, increased depths through the outer slope of the bar into the deep water beyond. But this would give no greater depths in the gap, and the supposition that beds of clay exist there at and below the depth of 31 feet, the only condition which appears to impose the necessity of long jetties at all.

If the submerged crests be placed at the varying heights shown in

sections CX′ and DY′, Plate II, the total areas over the jetties and through the gap will be somewhat diminished, and as the areas are all fixed, while the volume to be discharged remains the same, there will ensue in the gap a banking up of the waters and consequently an increase of slope and of velocity. The computations show that the natural slope of 0.000002498, or about $\frac{5}{32}$ inch to the mile, will be increased to 0.000004963, equal to about $\frac{5}{16}$ inch per mile; and the previous mean average velocity of 0.93 foot per second will be augmented to 1.09 feet per second. At what distance beyond the jetty-heads the original slope will be resumed cannot be ascertained by any process of computation, and consequently the distances beyond the points X and Y to which the jetties should be carried in order to maintain a channel of the required depth through the outer slope of the bar is largely conjectural. It is certain that they will not have to be extended as far as in the case of the low jetties last discussed. The calculations show, however, that, with the assumed divergence of 60 degrees, the heads of the jetties, or the point where divergence begins, need not be located more than 1,390 feet to seaward of the points X and Y, Plate I. This places their heads at X′ and Y′, respectively.

The practical solution of this question would of course be given by a gradual and cautious building up of the jetties, with frequent observations of their effects, care being taken that they are not raised so high as to prevent the complete filling of the tidal basin by each flood.

Numerous borings would of course be made before definitely fixing the width between the jetties, as it is possible that beds of material incapable of removal by natural scour may exist at such moderate depths that the half-mile gap should give place to a considerably wider one, a question which will doubtless turn mainly on the quantity of materials that may require to be excavated by dredging.

No change of this character and for this purpose, if judiciously made, would materially alter the estimated quantities of materials needed for the construction of the works.

The volume of water, a little more than thirty-six hundred and forty-five millions of cubic feet (3,655,374,296), which is supposed, in the foregoing discussion, to pass out through the gorge of the harbor on each ordinary ebb-tide, is believed to be less than the actual outflow of one tide.

Computations in all respects similar to those given above have been made on the supposition that the volume of outflow during each or ordinary tide is 4,834,000,000 of cubic feet, which is believed to be somewhat in excess of the actual outflow.

The computed hydraulic radius in the gap between the jetties is the same in both cases, which was to be expected, for the reason that we have only the calculated slopes and mean velocities to deal with, and that these vary with the volume of flow through the same section. The actual slope and velocity may be assumed to lie somewhere between those deduced in the two cases, and therefore to correspond to the deduced hydraulic radius. These theoretical results are of practical value only when they point to bottom velocities possessing a scouring power of sufficient intensity to maintain the new channel. In the case under discussion they theoretically satisfy that condition. Greater velocities could of course be established between the jetties by raising them higher, and in the seaward profile by extending them further out upon the bar.

It is quite likely that there would be an advantage in locating the sea ends of the jetties about one fourth of a mile to the southward of the

points indicated on Plate I. This would place the center of the half-mile gap at the point Y, where the sea end of the south jetty is placed in the drawing, and would turn the axis of the new channel more away from the prevailing storms which come from the northeast. The jetties in these positions are shown in Plate I, by heavy broken lines. It is not intended in this project to fix definitely either the length or the height of the jetties, or their precise location or distance apart, but to submit a general plan of improvement by means of submerged jetties that shall have their crests, throughout those portions which cross the thread of the current, at a height corresponding to the least width of the gap between them, the objects sought by this method being to lessen the first cost of the jetties, and to obviate the necessity of their subsequent extension.

The foregoing discussion will be revised if necessary in a supplementary report, as soon as the actual velocities and slopes have been ascertained by observation.

CONSTRUCTION AND ESTIMATES.

The jetties to which the following estimates apply are those last discussed, located on the lines CX′ and DY′, Plate I. The varying heights to which they rise above the bottom are shown by heavy parallel hatching in longitudinal sections CXX′ and DYY′, Plate II.

Their sea ends for a length of 3,000 feet on the north jetty and 3,500 feet on the south jetty have their crests at the level of half flood of spring-tides, or 3 feet above mean low-water.

The total length of the north jetty is 8,840 feet and that of the south jetty 13,040 feet. They are to consist of a superstructure of riprap stones with rather low side slopes resting on a mattress of fascines 2 feet thick.

The slope on the exterior faces of the jetties will be 1 upon 2 throughout their entire length. On the interior faces it will be 1 upon 1½ except on the sea ends, where, for a distance of about half a mile, it will be 1 upon 2.

For the north jetty the minimum width on top is 15 feet. This is in the lowest portion where it crosses Beach Channel. From that point outward the width increases to 24 feet, which is adopted for that portion which rises above mean low-water level.

The south jetty has a minimum width of crest of 12 feet where it crosses the main channel, at depths varying from 10 to 15 feet below mean low-water. Thence outward the width increases to 24 feet for the highest part, as in the case of the north jetty.

It cannot perhaps be safely assumed that beds of clay which may be encountered near the surface are sufficiently firm to resist the weight of the works without considerable subsidence. Where such beds, however, are overlaid by a thick stratum of sand, or a mixture of sand and shells, no great disturbance may be expected.

Where the jetties are constantly submerged they will not exert a pressure upon the mattress foundation exceeding 91 pounds per square foot for every foot in height, to which must be added, where the work rises above low-water level, about 59 pounds more for each foot in height during the time they are out of water. This takes no account of any lateral distribution of weight, which must in a greater or less degree take place in riprap constructions.

There being only two points where the actual pressure upon the bottom will approach near to one ton per square foot, while it will gen-

erally fall below one-half ton, it is believed that no settlement or disturbance of a very serious character will be likely to take place. At the two points referred to, in the main channel, both weight and cost could be reduced by replacing a portion of the hearting of the jetty with mattresses similar to those used for the foundation, as shown in Fig. 2, Plate II, care being taken to keep the wood well inside the riprap, so that after the voids in the latter have become filled with sand it would be safe from the ravages of worms. During the progress of work the voids could be filled at moderate cost by pumping from the bottom near by.

The quantities given in the following estimate assume the jetties above the foundation mattresses to be built of riprap only. The probable saving in cost that might be made by using a hearting of mattresses wherever admissible in both jetties is given in a separate item.

In calculating the quantities the mattress foundation is supposed to rest one foot below the surface of the bottom, thus adding one foot to the depths shown in the cross-sections and diminishing the allowance to be made for subsidence and compression.

At present prices a liberal estimate for the riprap work is $5.50 per cubic yard, and for mattresses $1.50 per square yard, two feet thick.

NORTH JETTY.		
58,000 square yards of mattress foundation, at $1.50	$87,000	
71,000 cubic yards of riprap, at $5.50	390,500	
		$477,500
SOUTH JETTY.		
87,400 square yards of mattress foundation, at $1.50	131,000	
138,600 cubic yards riprap, at $5.50	762,300	
		893,300
Total cost for both jetties, all riprap above foundation		1,370,800
Add for false work, piles, &c		100,000
Add 26 per cent. for subsidence, compression, and contingencies on in-shore or submerged portions of jetties		230,280
Add 37 per cent. for subsidence, compression, and contingencies on seaward ends of jetties		179,420
Excavating by dredging and raking, by contract, necessary in depths less than 31 feet below mean low-water		76,000
For eighteen months' work of United States dredging-steamer Henry Burden, rendered at various times in connection with other work (including current repairs and renewals of vessel and machinery)		26,000
Office expenses, superintendence, inspectors, &c., for four years		65,000
		2,047,500
Subtract for hearting of mattresses where admissible		247,500
Total estimated cost		1,800,000

In the execution of works of the character and magnitude of those contemplated in the foregoing project there are many advantages in having the funds supplied in liberal sums.

If the project be adopted the annual appropriation of about one-fourth the entire amount of the estimate for four successive years is very desirable. The completion of the work in three years would accomplish a considerable saving in the aggregate cost.

Respectfully submitted.

Q. A. GILLMORE,
Lieutenant-Colonel of Engineers,
Brevet Major-General United States Army.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers U. S. A.

PLATE I.

Accompanying a Project for improving the Entrance into Charleston Harbor, S.C. by means of Jetties.

New York March 9th 1878.

D. A. Gillmore
Lieut. Col. Engrs.
Bvt Maj Genl. U.S.A.

TIDES

The plane of reference to which the soundings are given is Mean Low Water

Corrected Establishment, or	
Average time of High Water after Moon's meridian passage	VII^h XXIV^m
Mean Rise and Fall of Tides, or	
Rise of Mean High Water above the plane of reference	5.1 ft.
Rise of High Water, Spring Tides do do average	5.5 "
Fall of Low Water do below do do	0.4 "
Rise of High Water Neap Tides above do do	4.7 "
Height of Low Water do do do do	0.4 "
Rise of Highest Tide observed do do	7.9 "
Fall of Lowest Tide do below do	2.4 "
Mean duration of Rise	6^h 16^m
Mean do of Fall	6 9

Statute Miles.

1 ½ ¼ ¼ 0 1 2

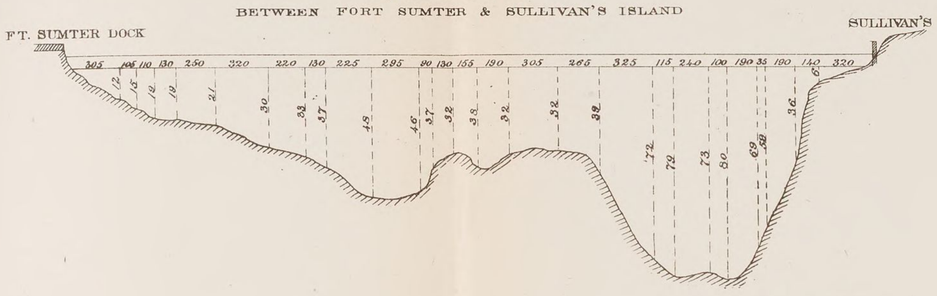
PLATE II

Accompanying a Project for improving the Entrance into Charleston Harbor, S.C. by means of Jetties.

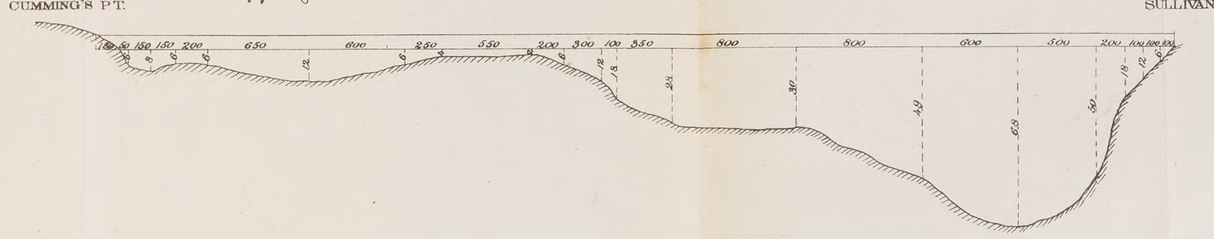
New York March 9th 1878.

(Signed) J. G. Gillmore
Lieut. Col. Engineers,
Bvt. Maj. Genl. U.S.A.

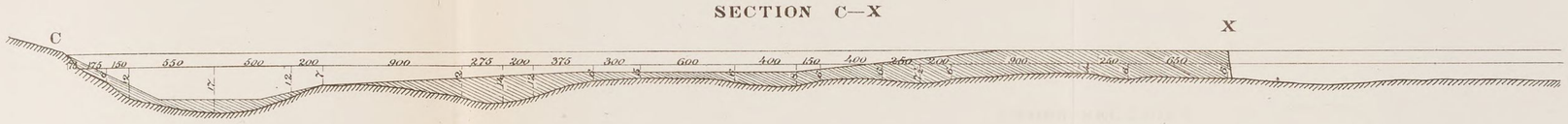
PROFILE
BETWEEN FORT SUMTER & SULLIVAN'S ISLAND



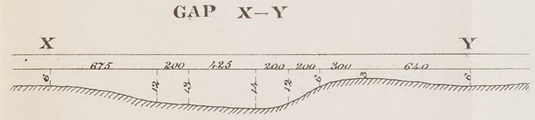
PROFILE
BETWEEN CUMMING'S POINT & SULLIVAN'S ISLAND



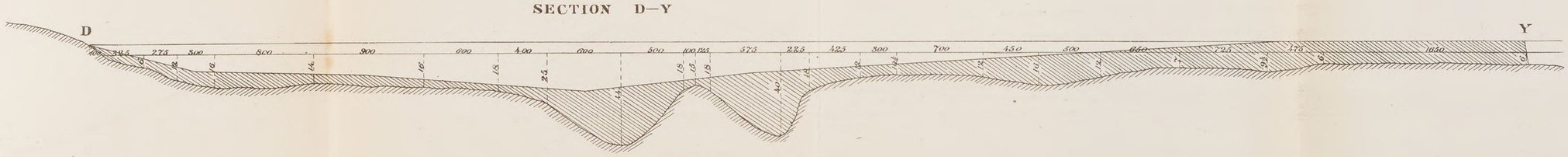
SECTION C—X



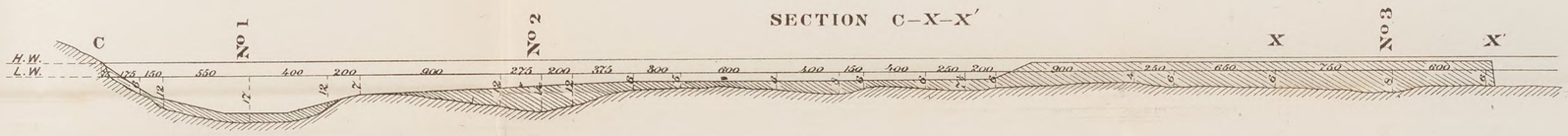
GAP X—Y



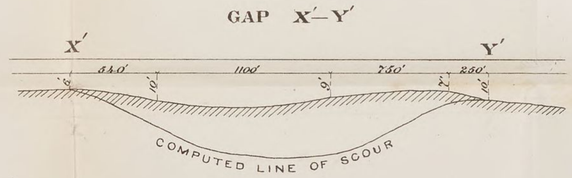
SECTION D—Y



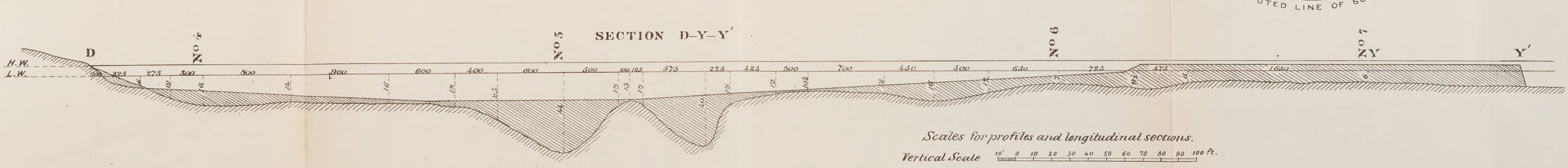
SECTION C—X—X′



GAP X′—Y′



SECTION D—Y—Y′



Scales for profiles and longitudinal sections.

Vertical Scale 10′ 0 10 20 30 40 50 60 70 80 90 100 ft.

Horizontal Scale 100 0 200 400 600 800 1000 1500 2000 ft.

Scale for cross sections.

70 0 10 20 30 40 50 60 70 80 90 100ft.

CROSS SECTIONS

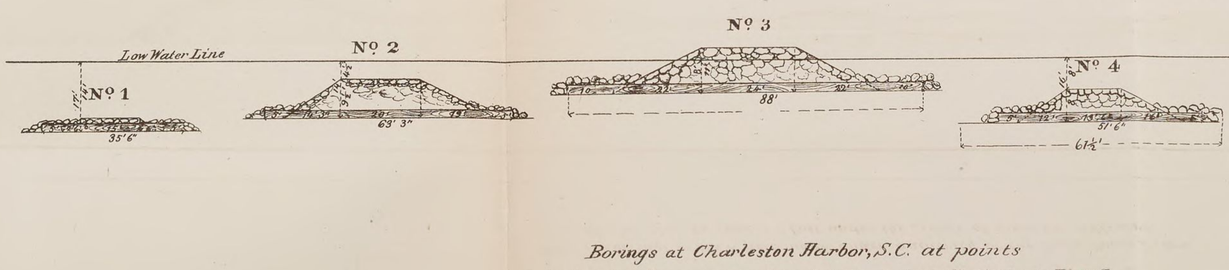
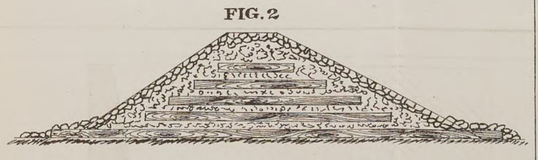
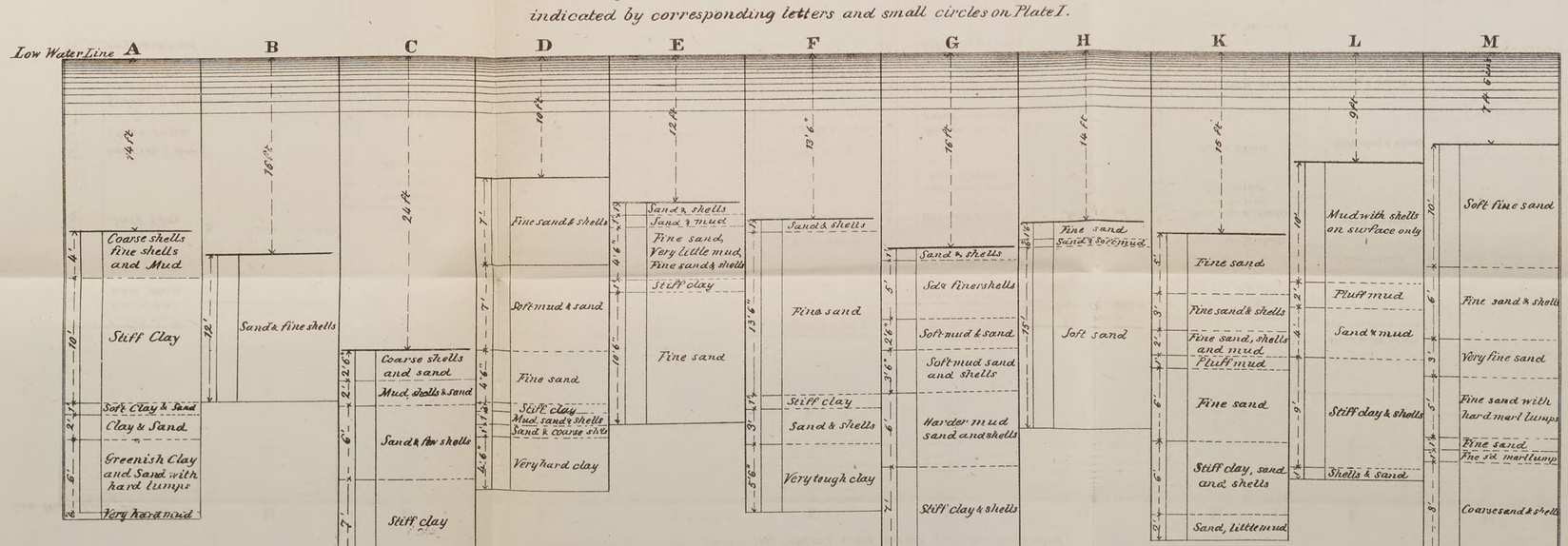


FIG. 2

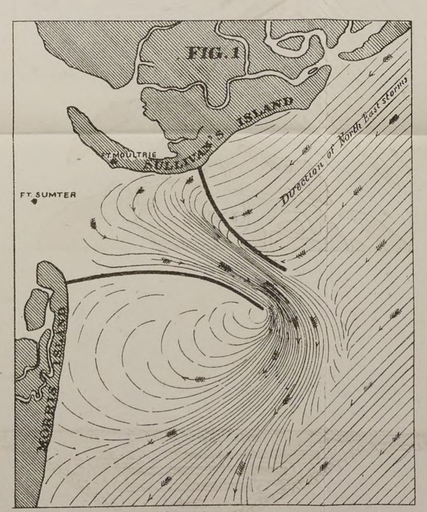


Borings at Charleston Harbor, S.C. at points indicated by corresponding letters and small circles on Plate I.



Note: The borings at M & N were made under authority of the Light House Board
All the other by Capt. J.C. Post under the orders of Lieut. Col. Gillmore.

FIG. 1



PRELIMINARY REPORT OF BOARD OF ENGINEERS.

ARMY BUILDING,
New York, April 24, 1878.

GENERAL: The board of officers of the Corps of Engineers, constituted by Special Orders No. 28, Headquarters Corps of Engineers, Washington, D. C., March 19, 1878, with instructions to take into consideration and report upon a project for the permanent improvement of the channel of entrance into Charleston Harbor, South Carolina, submitted by General Gillmore, have the honor to submit this preliminary report.

The board have examined the project in question so far as this could be done without additional information as to the surface and bottom velocities upon the bar.

The board have also, in a general way, discussed the project for an improvement of the channel by ordinary jetties rising above low-water and more distant from each other than in the plan presented for investigation, and General Gillmore has made an approximate estimate for the same.

But it is not the intention of the board at present to define the jetties in any precise manner as to their distance apart, their extent measured from the shore, or the heights with respect to low-water to which these structures should be carried. All such points will be discussed in a future report based upon all the information which the locality can furnish pertinent to the subject. But the board is of opinion that the channel over the bar can be improved, to a probable depth at mean low-water of 21 feet, by the use of jetties submerged in whole or in part, and by a mode of construction very gradual in its progress, which will admit of such modifications in the lengths and heights of the jetties as experience shall dictate. And, further, the board concurs with the views expressed by General Gillmore in his report that the project adopted should disturb to the least possible degree the present regimen of influx and efflux over the bar.

According to the extent of the project which may be adopted the cost will be from $1,800,000 to $3,000,000.

Respectfully submitted.

Z. B. TOWER,
Colonel of Engineers, Brevet Major-General.
H. G. WRIGHT,
Lieutenant-Colonel of Engineers, Brevet Major-General.
JOHN NEWTON,
Lieutenant-Colonel of Engineers, Brevet Major-General.
Q. A. GILLMORE,
Lieutenant-Colonel of Engineers, Brevet Major-General.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers U. S. A.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 72.

LETTER

FROM THE

ACTING SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of April 17, 1878, *information in relation to the consumption of manufactured articles in the United States to which the tariff duties apply.*

MAY 10, 1878.—Ordered to lie on the table and be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., May 7, 1878.

SIR: I have the honor to acknowledge, from the Secretary of the Senate, the receipt of a copy of a resolution adopted by the Senate on the 17th of April, requesting me to furnish all the information in the possession of this department as to the total consumption within the United States of all manufactured articles to which tariff duties apply, including those imported as well as those produced in this country, with the proportion of each, and, in response thereto, to transmit herewith a statement, prepared by the Bureau of Statistics, which furnishes the information requested, so far as data have been obtained for instituting the desired comparison.

As the department possesses no full information in regard to the value of articles manufactured in the United States since that obtained in 1870, the year of the last decennial census, it became necessary to confine to that year the comparison of the consumption in this country of articles of domestic and foreign production.

Very respectfully, yours,

JOHN B. HAWLEY,
Acting Secretary.

Hon. W. A. WHEELER,
President of the Senate.

Statement showing the amount of the principal manufactured articles subject to customs-duties produced in the United States during the year ended June, 1870, *the amount exported and the net consumption of the same; the amount imported for consumption and the total consumption within the country, with the percentage of the amount imported.*

Manufactured articles.	Amount produced in the census year 1870.	Exported during the fiscal year 1870.	Consumption of domestic, during the year.	Amount imported for consumption during the fiscal year 1870.	Total consumption in the year.	Percentage of, imported.
Acid, pyroligneous and sulphuric	$280, 430	$134, 695	$145, 735	$212	$145, 947	.14
Agricultural implements	52, 066, 875	1, 068, 476	50, 998, 399	.....	50, 998, 399	.....
Belts	1, 303, 410	4, 323	1, 299, 087	(*)	1, 299, 087	.....
Blacking	817, 768	81, 519	736, 249	34, 034	770, 283	4. 42
Brass and manufactures of	10, 459, 735	169, 997	10, 289, 738	60, 554	10, 350, 292	.58
Brick	29, 028, 359	25, 091	29, 003, 268	19, 118	29, 022, 386	.06
Brooms and brushes	9, 317, 108	154, 419	9, 162, 689	248, 055	9, 410, 744	2. 63
Buttons	1, 778, 893	.....	1, 778, 893	1, 150, 735	2, 929, 628	39. 27
Cards, playing	765, 000	(*)	765, 000	2, 735	767, 735	.35
Carpets	22, 766, 900	1, 864	22, 765, 036	4, 129, 207	26, 894, 243	15. 35
Carriages and wagons	67, 386, 548	444, 931	66, 941, 617	23, 423	66, 965, 040	.03
Cars, railroad	31, 070, 734	531, 611	30, 539, 123	.....	30, 539, 123	.....
Cement	2, 033, 893	61, 490	1, 972, 403	18, 057	1, 954, 346	.92
Chemicals, drugs, &c	19, 417, 194	1, 345, 988	18, 071, 206	11, 871, 121	29, 942, 327	39. 64
Chocolate	946, 259	(*)	946, 259	5, 757	952, 016	.60
Clocks, cases, and materials	3, 022, 253	584, 673	2, 437, 580	251, 068	2, 688, 648	9. 34
Clothing	161, 560, 836	424, 170	161, 136, 666	3, 888, 672	165, 025, 338	2. 35
Combs	688, 889	9, 666	579, 223	218, 429	797, 652	27. 38
Confectionery	15, 922, 643	14, 729	15, 907, 914	19, 286	15, 927, 200	.12
Copper	14, 074, 583	1, 042, 246	13, 032, 237	592, 803	13, 625, 040	4. 35
Cordage and twine	8, 979, 382	251, 343	8, 727, 039	42, 469	8, 769, 508	.48
Cotton goods	177, 903, 687	2, 381, 457	175, 522, 230	21, 900, 773	197, 423, 003	11. 09
Crucibles	1, 117, 463	.....	1, 117, 463	193	1, 117, 656	.01
Dyestuffs and extracts	2, 053, 300	1, 002, 636	1, 050, 664	1, 634, 278	2, 684, 942	60. 86
Flax, manufactures of	2, 178, 775	.....	2, 178, 775	16, 460, 613	18, 639, 388	88. 31
Fruits and vegetables: Canned and preserved	5, 425, 677	119, 624	5, 306, 053	519, 899	5, 825, 952	8. 92
Furniture	69, 088, 684	1, 245, 886	67, 842, 798	805, 881	68, 648, 679	1. 17
Gas and lamp fixtures	4, 201, 778	(*)	4, 201, 778	(*)	4, 291, 778	.....
Glass: Window	3, 811, 308	530, 654	18, 705, 208	1, 447, 881	22, 791, 467	17. 93
Glass: Other manufactures of	15, 424, 554			†2, 638, 978		
Glue	1, 709, 605	5, 621	1, 703, 984	184, 542	1, 888, 526	.....
Gold leaf and foil	1, 411, 431	365	1, 411, 066	2, 953	1, 414, 019	.02
Gunpowder	4, 011, 839	170, 109	4, 841, 730	27	4, 841, 757	.....
Hair-cloth	467, 750	4, 863	2, 434, 726	347, 628	3, 028, 481	19. 60
Hair-work	1, 971, 839			246, 127		
Hats, &c	28, 073, 930	194, 505	27, 879, 425	488, 133	28, 367, 558	1. 72
Hoop-skirts and corsets	4, 758, 290	72, 047	4, 686, 243	.....	4, 686, 243	.....
Hosiery: Cotton	18, 411, 564	(*)	18, 411, 564	4, 653, 583	23, 519, 080	21. 71
Hosiery: Woolen				453, 933		
India-rubber and elastic goods	14, 566, 374	185, 844	14, 380, 530	3, 638, 841	18, 019, 371	20. 19
Ink, printing and writing	966, 802	(*)	966, 802	83, 098	1, 049, 900	7. 91
Iron and steel, and manufacture of: Iron, bar, &c	128, 062, 627	26, 024	128, 036, 603	3, 028, 213	131, 064, 816	2. 31
Scales and balances	2, 823, 816	116, 965	2, 706, 851	.....	2, 706, 851	.....
Screws	3, 425, 473	(*)	3, 425, 473	34, 704	3, 460, 177	1. 00
Sewing-machines and fixtures	15, 847, 304	2, 233, 326	13, 613, 978	57	13, 614, 035	.....
Wire and wire-work	8, 017, 625	.....	8, 017, 625	137, 450	8, 155, 075	1. 68
Other manufactures of, including machinery, steam-engines, &c	140, 003, 698 (See note.)	3, 012, 833	136, 990, 865	20, 710, 323	157, 701, 188	13. 13
Steel: Cutlery	5, 622, 801	176, 595	5, 446, 206	1, 709, 029	7, 155, 235	23. 88
Edge-tools	5, 482, 539	298, 652	5, 183, 887	244, 978	5, 428, 865	4. 53
Fire-arms	5, 582, 258	5, 015, 732	566, 526	554, 965	1, 121, 491	49. 48
Needles and pins	955, 854	(*)	955, 854	389, 702	1, 345, 556	28. 96
Saws	3, 175, 289	11, 369	3, 163, 920	66, 379	3, 230, 299	2. 05
Steel pens	180, 000	.....	180, 000	77, 765	257, 765	30. 17
Other manufactures of	4, 578, 387	111, 401	4, 466, 981	5, 535, 634	10, 002, 615	55. 34
Japanned ware	216, 145	.....	216, 145	23, 335	239, 480	9. 74
Jewelry and manufactures of gold and silver	22, 321, 029	59, 711	22, 261, 318	723, 618	22, 984, 936	3. 15

* Not separately specified. † Plate glass, 1,447,283.

Statement showing the amount of the principal manufactured articles subject to customs-duties produced in the United States, &c.—Continued.

Manufactured articles.	Amount produced in the census year 1870.	Exported during the fiscal year 1870.	Consumption of domestic, during the year.	Amount imported for consumption during the fiscal year 1870.	Total consumption in the year.	Percentage of, imported.
Lamps, lanterns, and locomotive head-lights..	$995, 289	$186, 008	$809, 281	.....	$809, 281	.....
Lead:						
Bar and pig.....	4, 246, 883	28, 315	18, 298, 881	$3, 530, 836	22, 006, 488	16. 85
Manufactures of	14, 080, 313			176, 771		
Leather.....	157, 237, 597	111, 077	157, 126, 529	6, 141, 487	163, 268, 007	3. 76
Boots and shoes	181, 644, 090	419, 612	181, 224, 478	(*)	181, 224, 478	.....
Saddlery and harness	32, 709, 981	55, 379	32, 654, 602	61, 189	32, 715, 791	0. 19
Gloves and other manufactures of...	8, 556, 564	87, 263	8, 469, 301	4, 012, 700	12, 482, 001	32. 14
Matches	3, 540, 008	172, 701	3, 367, 307	.....	3, 367, 307	.....
Marble manufactures ...	30, 233, 514	180, 273	30, 053, 241	664, 991	30, 718, 232	2. 16
Musical instruments....	13, 905, 908	267, 400	13, 638, 508	704, 593	14, 343, 101	4. 91
Oils:						
Animal	9, 728, 667	125, 509	9, 603, 158			
Fish	3, 993, 139	1, 022, 710	2, 970, 429	1, 469, 731	[26, 980, 419	5. 44
Vegetable.....	13, 249, 241	312, 140	12, 937, 101			
Oil-cloth, floor.....	4, 211, 579	.....	4, 211, 579	64, 521	4, 276, 100	1. 51
Paints and colors	16, 932, 405	109, 906	16, 823, 499	1, 125, 173	17, 948, 672	6. 27
Paper.....	48, 676, 935	514, 592	48, 162, 343	1, 646, 078	49, 808, 421	3. 55
Paper-hangings	2, 165, 510	(*)	2, 165, 510	115, 021	2, 280, 531	5. 04
Percussion-caps.....	290, 000	(*)	290, 000	54, 356	344, 356	15. 74
Perfumery, cosmetics, and fancy soaps.....	2, 029, 582	284, 315	1, 745, 267	407, 955	2, 153, 222	18. 94
Pipes, tobacco	447, 330	.....	447, 330	280, 345	727, 675	.....
Plated ware.....	8, 142, 150	29, 679	8, 112, 471	92, 050	8, 204, 521	0. 92
Saltpeter	66, 280	.....	66, 280	358, 139	424, 419	84. 38
Silk manufactures	12, 740, 762	11, 648	12, 729, 114	24, 257, 671	36, 986, 785	65. 58
Starch	5, 994, 422	107, 187	5, 887, 235	17, 642	5, 904, 877	. 28
Stoneware and earthenware.....	6, 045, 536	40, 949	6, 004, 587	4, 460, 228	10, 464, 815	42. 62
Straw goods	7, 282, 086	10, 438	7, 271, 648	1, 189, 130	8, 460, 778	14. 05
Sugar, refined.....	108, 941, 911	555, 482	108, 386, 429	39, 077	108, 425, 506	. 03
Tobacco:						
Cigars	35, 503, 867	9, 584	35, 494, 283	1, 690, 866	37, 185, 149	4. 54
Other manufactures of.....	36, 258, 177	1, 595, 221	34, 662, 956	25, 788	34, 688, 744	. 07
Trunks, valises, &c.....	7, 725, 488	75, 389	7, 650, 099	.....	7, 650, 099	.....
Types, stereotype-plates, &c	2, 180, 001	(*)	2, 180, 001	22, 310	2, 202, 311	10. 13
Umbrellas	4, 098, 032	844	4, 097, 188	39, 491	4, 136, 679	. 95
Varnish	4, 991, 405	46, 985	4, 944, 420	88, 236	5, 032, 656	1. 75
Watches and watch materials	2, 394, 361	4, 335	2, 390, 026	2, 823, 253	5, 213, 279	54. 15
Wood, manufactures of.. Lumber, manufactures of, doors, sashes, shingles, &c.....	303, 545, 452	8, 990, 434	294, 555, 018	8, 033, 233	302, 588, 251	2. 65
Wooden ware.....	4, 142, 124	258, 347	3, 883, 777	(*)	3, 883, 777	.....
Wool, manufactures of..	151, 298, 196	‡177, 223	173, 211, 304	‡37, 975, 206	211, 186, 510	17. 98
Worsted goods	22, 090, 331					
Zinc, manufactures of...	1, 224, 447	92, 159	1, 132, 288	947, 053	2, 079, 341	45. 06

* Not separately specified.

‡ Not including carpets.

NOTE.—Having received from the American Iron and Steel Association the amount of iron and steel, and manufactures thereof, produced in the United States during the year 1876, the following statement is appended:

Commodities.	Production in 1876.	Exported during the fiscal year 1876–'77.	Consumption of domestic, during the year 1877.	Amount imported for consumption during the year 1876–'77.	Total consumption during the year.	Percentage of, imported.
Pig-iron	$40, 000, 000	$89, 029	$39, 910, 971	$1, 664, 280	$41, 575, 251	4.00
Bar, angle, &c	27, 500, 000	194, 775	27, 305, 225	1, 394, 922	28, 700, 147	4.08
Plate and sheet	11, 500, 000	35, 723	11, 464, 277	509, 976	11, 974, 253	4.26
Iron rails	13, 700, 000	243, 811	13, 456, 189	117, 081	13, 573, 270	.85
Nails	11, 500, 000	319, 584	11, 180, 416	63	11, 180, 479	.....
Steel rails	17, 000, 000	Not specified.	17, 000, 000	125, 408	17, 125, 408	.73
Other steel	12, 800, 000	6, 378, 400	6, 421, 510	3, 882, 833	10, 304, 343	37.68

EDWARD YOUNG, *Chief of Bureau.*

BUREAU OF STATISTICS, TREASURY DEPARTMENT, *May* 7, 1878.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 73.

LETTER

FROM

THE SECRETARY OF WAR,

RECOMMENDING

An appropriation for the construction of a bridge across the Mississippi River at or near Fort Snelling, and the granting of the right of way for a public highway through said reservation.

MAY 10, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 9, 1878.

The Secretary of War has the honor to transmit to the United States Senate copy of a communication from Hon. S. J. R. McMillan, United States Senate, and Hon. J. H. Stewart, House of Representatives, dated the 26th of March last; also copy of a memorial from Mr. J. W. McClung, chairman of a special committee of the Chamber of Commerce of the city of Saint Paul, Minn., relative to the erection of a bridge across the Mississippi River at or near Fort Snelling, and requesting that the government make an appropriation for the purpose, and grant the right of way for a public highway through said reservation.

Attention is invited to the inclosed report of Brig. Gen. Alfred H. Terry, commanding Department of Dakota, to whom the subject was referred, who is of opinion that the advantages accruing to the government are "sufficiently great to justify not only a concession of the right of way asked for, but pecuniary aid from the government as well."

The Chief of Engineers transmits the inclosed copies of reports from Maj. G. K. Warren and Maj. F. U. Farquhar, Corps of Engineers, and remarks:

It seems that the plan and location of the proposed bridge have not yet been determined upon, but it is supposed that its height will be about 68 feet above high-water mark. Should this be the case, and a span of 200 feet in the clear be provided from the right or Fort Snelling bank of the river toward the left bank, the officers referred to are of opinion that the bridge will offer no material obstruction to the navigation of the river at that point.

With regard to the cost of the proposed bridge the Chief of Engineers reports:

The project of Mr. Sewall adopts the height of the highway bridge at Saint Paul (68 feet) as the height of the proposed bridge at Fort Snelling, but this height might be reduced to 58 feet above high water without present or prospective injury to navigation. Adopting 58 feet as the height, and upon the supposition that there will be six spans, a rough estimate has been made of its probable cost. From the best information obtained it appears that the sum of $132,000 might be regarded as a fair approximate estimate of the cost of the proposed bridge.

Concurring in the views expressed in the inclosed papers, it is respectfully recommended that an appropriation of one-half the estimated cost of the bridge be made by Congress, and that the right of way across the reservation be granted as requested.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

UNITED STATES SENATE CHAMBER,
COMMITTEE ON CLAIMS,
Washington, March 26, 1878.

SIR: The citizens of Ramsey County and vicinity, Minnesota, are very much impressed with the necessity for the erection of a bridge across the Mississippi River at or above Fort Snelling, and as near thereto as engineering principles and a due regard to economy will permit. It is estimated that a bridge at said point would cost from $120,000 to $160,000. The United States Government has a permanent interest in Fort Snelling, and the reservation belonging therewith, and have annually to pay out a large sum of money for ferriage to and from said fort, and during certain seasons of the year that is not available.

It is desirable that when such a bridge is erected it should be free to the public from all tolls or other dues.

In view of the fact that such a bridge would be a great convenience as well as a saving of a large annual outlay to the United States Government, and add very much to the value of Fort Snelling reservation, in behalf of the city of Saint Paul and county of Ramsey, Minnesota, on which the burden of taxation for the erection of said bridge would fall, we respectfully lay the matter before you for consideration, and request that if, after examination, you are convinced that the interests of the government would be subserved, a recommendation be made at present session of Congress for the appropriation of such an amount as in your judgment the government and other public interests would justify, and also to grant the right of way for a public highway through said reservation to connect with other public highways.

Very respectfully,

S. J. R. McMILLAN.
J. H. STEWART.

The Hon. SECRETARY OF WAR,
Washington, D. C.

Memorial.

To the Hon. Senate and House of Representatives of the United States:

We are instructed by the Chamber of Commerce of the city of Saint Paul to bring to your attention the necessity of constructing a bridge at Fort Snelling as a matter of economy to the general government.

We inclose official statements showing that in time of profound peace it cost the government about $300 per year, and during the late war $1,500 per month, actual expenses to pay ferriage for the want of a bridge at this point.

The government has therefore paid nearly $100,000 for ferriage, and is still paying ferriage, with the liability to pay $100,000 more whenever another war may occur.

The government is still in its infancy, having barely passed its first centennial. If it lives the usual age of a well-regulated nation, it is safe to say that it must still need its forts for many more wars, unless it is an exception to the general rule governing nations. We

cannot expect, therefore, that we can yet afford to beat our swords into plowshares and our spears into pruning-hooks and hold our forts as peace establishments, with no further necessity for repeating the suicidal extravagance and folly of paying $1,500 per month for the privilege of reaching and using our own property.

We shall have other wars, and now in time of peace we should be prepared for war by completing Fort Snelling; for it is not a complete fort without the means of reaching it, any more than it would be if it lacked a roof or doors or windows or any other condition necessary to enable the United States to use it without asking the privilege of an individual who owns its only approach.

The estimates of the cost of erecting an iron bridge at Fort Snelling have varied from $120,000 to $160,000.

The city of Saint Paul is interested in erecting a free bridge at this point, and would be willing to join the government and share a reasonable portion of the expense. On behalf of said city, therefore, the chamber of commerce ask Congress to make an appropriation at least equal to one-half the maximum estimate above stated for the purpose of erecting a free bridge at Fort Snelling, to be kept in repair by the city without expense to the government.

The United States own a large tract of land at and near the fort which would be largely enhanced in value by the erection of a bridge inviting travel from 80,000 people living in Saint Paul and Minneapolis, and the hundreds of thousands of strangers who visit the attractive Minnehaha Falls in the immediate vicinity.

Enough of these lands might be sold after this improvement to reimburse the government fully for the cost of the bridge, and leave the fort and its grounds ample for all uses of the government and unimpaired in value, thus exchanging what is now a useless and unproductive possession for a valuable improvement, saving in actual cost about $300 per year in time of peace, and $18,000 per year in time of war.

Such an exchange of the unproductive land for a productive improvement, would not only pay the government in actual income every month in the year, and thus stop the leaks, where enough money has been lost within a few years to build a bridge, but it would so enhance the value of the remaining land that its sale would result in gains which would alone go far toward paying for the bridge.

As time is important, we ask that this matter be immediately considered on its merits, and that such appropriation may be made as to your honorable bodies may seem proper and expedient.

J. W. McCLUNG,
Chairman Special Committee.

(Copy.)

SAINT PAUL, *April* 9, 1878.

DEAR SIR: Herewith I send plan and profiles of lines surveyed for proposed bridge. Only the point of island was fixed by measurement; except the island the map is quite accurate and is sufficient to locate the bridge by. The location should be at the narrowest place the officers in charge of the fort will approve. The shortest line would be at the ferry, and run through the fort. It has not been surveyed but would be 100 feet shorter than any of the lines shown. The shortest line that will keep clear of the fort and buildings is the red dotted line. The full red line which comes to the same place on the fort side, is but a little longer, and is more at right angles with the direction of the current. The width of the valley increases all the way to the 1,800 feet limit. The actual widths can be best taken from the profiles (where each blue line counts for 10 feet.)

The cost of the bridge will be in proportion to its length. The foundation is coarse gravel, which we could not penetrate with an iron rod more than 16 feet, nearly the same as at Saint Paul.

Respectfully,

J. S. SEWALL.

Hon. WM. DAWSON,
Chairman Fort Snelling Bridge Commission.

DETROIT, MICH., *April* 18, 1878.

GENERAL: I have the honor to acknowledge the receipt of a letter from your office, dated April 8, 1878, inclosing a communication to the Hon. Secretary of War, from Hon. S. J. R. McMillan, United States Senate, and Hon. G. H. Stewart, House of Representatives, in relation to a proposed bridge to be erected across the Mississippi River, at or near Fort Snelling, Minn., and a tracing showing the locality, which were referred to me for report.

The exact site has not yet been determined upon, but I have traced in *blue* on the tracing sent me, lines proposed by the engineer.

I inclose the preliminary report of the bridge engineer which is accompanied by a tracing.

I also inclose two slips cut from the Pioneer Press, of Saint Paul, of April 12 and 13, and one slip from the Saint Paul Dispatch of April 12.

The proposed height of the bridge above high-water is 68 feet, which is ample for any vessels likely to navigate this portion of the river.

Providing that there is a span of 200 feet from the right (or Fort Snelling) bank of the river towards the left bank, I see no objection to the bridge being built as far as the navigation of the river is concerned.

I return herewith the letter referred to and the tracing sent me.

Very respectfully, your obedient servant,

F. U. FARQUHAR,
Major of Engineers.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, United States Army, Washington, D. C.

[From the Saint Paul Pioneer Press, April 13, 1878.]

Fort Snelling bridge.

A meeting of the Fort Snelling bridge commissioners was appointed for 3 o'clock p. m. yesterday, but owing to the non-attendance of the engineer, Mr. Sewall, and one of the commissioners, Mr. Knapheide, no formal meeting was held. The reason for these two gentlemen not being present is that they were not notified of the meeting. Messrs. Dawson, Cochran, Linkeke, and Thornton were present and looked at the map, prepared by Mr. Sewall, of the river and bluffs along that part of the stream where it is proposed to build the bridge.

FOUR PLACES FOR THE BRIDGE.

This map shows four places, indicated by lines drawn, where the bridge might be judiciously located. No. 1 is a line drawn across 300 feet above the fort. This line is 1,122 feet in length, and is the shortest line. No. 2 is 600 feet above the fort, and is 1,169 feet in length, No. 3 is 1,221 feet long, and is 900 feet above the fort. No. 4 is 1,337 feet in length, and is 1,300 feet above the fort. These distances across the river are measured from certain lines run along on both banks of the stream. The bridge will not be quite as long as these measurements indicate. The banks where the measurements were made are about 112 feet above the water in the river at its present height, except No. 4, which shows that the structure will be 122 feet above the present stage of water. In regard to this, however, Mr. Sewall says that the banks can, and probably will, be cut down 10 feet, if the bridge is built there, so that No. 4 may be considered as being the same distance above the water as the other three.

MR. SEWALL'S REPORT.

Besides the maps, Mr. Sewall prepared a report in writing, which he sent to the commissioners. In this report he recommends a bridge as near the fort as possible. He says the narrowest part of river is at the fort. From that point it continues to widen all the way up to the 1,800 feet limit prescribed by the law. He wants to get as near the fort as the government will permit. In regard to the foundation, he says it is the same as that upon which rest the piers of the Wabasha street bridge—a gravel bed.

ADJOURNMENT.

Without doing anything, the commissioners adjourned to meet again at 11 o'clock this forenoon.

[From the Saint Paul Dispatch, April 12, 1878.]

Fort Snelling bridge.

The Fort Snelling bridge commissioners met at 11 a. m. this day, Mr. Dawson in the chair.

Mr. Cochran, the secretary, read the minutes of the last meeting.

Mr. Sewall, the city engineer, presented a carefully-drawn profile, showing the different approaches, at the fort and above. This profile showed that at the narrowest point it would require 1,000 feet of bridging: at the longest 1,200 feet.

Mr. Cochran said he had called to see General Terry, but had failed, and had since written,

EXTRACT FROM

Sheet N°. 2

MAP

OF THE

MISSISSIPPI RIVER

From Surveys made under direction of

BVT. MAJ. GEN. G. K. WARREN, MAJ. OF ENGRS, U.S.A.

SCALE 1/2400

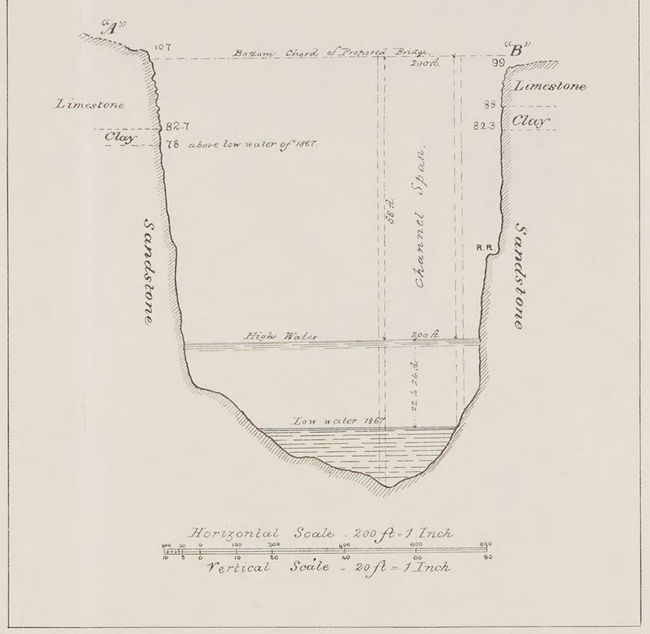
Scale of Feet.

Crest of submerged Bars shown by dotted lines.
Stage of water at date of Survey 4.7 feet above low water mark.
Levels taken Sept 12th 1867.

G. K. Warren
Major Engineers & Brevt Major General U.S.A.

Mag. Mer. Var. 11° E.

SECTION on "A" "B" (Ft. Snelling)



Horizontal Scale - 200 ft = 1 Inch.

Vertical Scale - 20 ft = 1 Inch.

Cemetery

Stone Building

Stable

Mississippi River

Island

Bottom covered with Trees

Road from Ferry

No 1

No 2

No 3

No 4

1500 Feet from Ferry

but had received no answer, and supposed he was waiting to hear from the War Department.

Mr. Dawson said the commission could not decide upon the line until it should be definitely ascertained about the right of way—whether the government could grant it or not. The probability is if it could be shown that it was of great advantage to the government and have it strongly indorsed by the military authorities here, there would be but little trouble.

Letters were read by the secretary from Senator McMillan and Congressman Stewart in regard to the matter, the substance of which the commission was desirous should not be published until General Terry should be heard from, who is in communication with the War Department on the question of location, right of way, and the benefits to accrue to the government from this bridge.

The impression prevailed with the commission that the survey was made at the nearest point which would pass the roadway directly through the fort; and Mr. Cochran doubted if General Sherman, who has a great love for this time-honored, romantic spot, would under any consideration give his consent to have it thus desecrated. Mr. Sewall, however, informed the gentleman that the survey was made outside the fort, between it and the cemetery; as he had considered it would be a hopeless request to ask the government to allow the roadway to go through the fort.

Mr. Dawson asked if it would be safe to ask for bids before the matter of the right of way should be settled.

Mr. Sewall thought it would, because the contractors would, after they were awarded the bid, require at least two months to get material on the ground to make a commencement.

The question of estimates of different styles of bridges was discussed; the cost of piers, &c.

Mr. Cochran said he believed the six piers would cost $63,000. He came to the conclusion after a hasty estimate.

Mr. Sewall thought they would not cost so much; and, in answer to a question from Mr. Dawson, said the two large piers would contain one thousand yards of masonry, and cost one-third of the sum above stated, but the other four would not cost nearly so much. He said there were several ways of economizing in the piers and yet have them as substantial as was necessary; that there would be no economy in making them all of iron, because, no matter what they were made of, they must have the weight. There will be two piers in the sand rock, two in the water that will require piling, and two on the bar that will also require piling, and the piling will cost from $4,000 to $5,000 for each pier.

The question of clearance came up, and Mr. Sewall said that although he did not consider that it was necessary to have as much as the Saint Paul bridge, which was 68 feet, yet he based his survey, and whatever opinion he might give as to cost, on that height; that if it was not as high as that Minneapolis might object; that it could be made 20 feet lower with no detriment to the roadway in any respect—not even if it should be necessary in the future to use it for street-railroad purposes; that it was desirable to get it down as low as possible and avoid the difficulties above mentioned.

The question came up as to the proper way of getting estimates. This brought out a discussion as to the propriety of employing two of our best engineers, whose duty it should be to make as careful an estimate as possible of the cost of the structure, because it seemed absolutely nccessary to know whether the bridge could be built at all for $100,000. If it was going to cost $125,000, or even more, why then there was only one course to pursue—abandonment of the enterprise.

Mr. Sewall said he could make an estimate and come within 10 per cent. of the cost, and that was probably as near as any engineer could come; but here comes the difficulty. The engineer will not be willing to make the estimate unless he is to superintend the work. It is a matter that requires a great amount of thought, and an engineer would hardly be willing to risk his reputation unless he was to superintend the work and labor. This matter was pursued no further in the open session of the commission.

Mr. Lindeke wished to know if it would not be necessary to specify the number of piers.

Mr. Sewall thought not; that after the estimates were made and bids advertised for, it could be specified in the advertisement for five piers or six, as might be deemed necessary. This was based upon the supposition that the work be proceeded with at once.

As the question of the preliminary survey was reverted to again, it was suggested by Mr. Dawson that if it should be found that the engineers in their estimate exceeded the amount of the appropriation, the commission might then advertise for bids to put up such a bridge as the engineers and the commission should deem necessary.

Mr. Sewall said that in receiving bids there would be a difference between contractors of as much as 20 per cent.; so that if the preliminary survey should say it would cost more than $100,000 to build the bridge, it did not argue that it would cost more, for engineers who make the estimates would rather be 10 per cent. above the cost than 1 per cent. below.

Mr. Dawson referred to the bridge at Sauk Center, and stated that the bridge-builders were putting that structure up at the actual cost of the iron in order to keep their men at work.

At this juncture the commission thought it necessary to discuss the matter further in secret, and the Dispatch representative withdrew.

[From the Saint Paul Pioneer Press, April 13, 1878.]

The Fort Snelling bridge.

All the Fort Snelling bridge commissioners, consisting of Messrs. Dawson, Knapheide, Lindeke, Cochran, and Thornton, were present, together with Mr. Sewall, at the meeting of the commissioners yesterday forenoon. The purpose of the meeting was not a definite one, but the talk of an hour or more demonstrated what is the first step to be taken in this matter, and that was the selection of an engineer. Until that is done, it appeared plain enough to the commissioners that absolutely nothing could be done. After talking from 11 till 12 o'clock they found this out. The commissioners desired to know about what the bridge would cost, and were told by Mr. Sewall that he could not tell till he had made a careful estimate, and that no engineer would make estimates and stand by them unless he could be employed to superintend the work. This seemed reasonable, and demonstated the necessity of selecting an engineer at the start. This being the case, the commissioners went into secret session, excluding everybody, and talked over the matter of selecting an engineer.

THE MEETING.

When the commissioners met they had before them the maps mentioned yesterday as having been prepared by Mr. Sewall. These maps were explained by the city engineer, who said he favored very decidedly the lower line for the bridge, that is, the one nearest the fort. It is the shortest one and interferes with the buildings in the fort no more than the other lines do. The discussion that followed was very disconnected, and the members in their talk had up all phases of the bridge matter, and would step from one matter to another and back again in a way that will prevent any connected account of what was said.

LETTERS READ.

Mr. Cochran read a letter from Senator McMillan and another from Dr. Stewart, and also a report of Mr. Sewall to the commissioners about the maps he had prepared. He also stated that he had written General Terry about the matter, but that the general had not replied, and he (Cochran) supposed the general was awaiting the arrival from Washington of certain documents in relation to the bridge which had been referred to him.

SOME DISCUSSION.

Mr. Dawson expressed the opinion that the commissioners could not determine the place for the bridge until it was ascertained whether or not we could obtain the right of way. He thought that if we could show to the government that the bridge would be of great advantage to the government, and if the project could be strongly indorsed by the military authorities here, we would be more likely to succeed.

Mr. Cochran, in referring to the four lines drawn on the map by Mr. Sewall representing the different places where the bridge might be located, said that General Sherman thought a great deal of Fort Snelling, and he felt sure that the general would never consent to allowing us to run a county road right through the officers' quarters. This was said with reference to the lower line, that runs nearest the fort.

Mr. Sewall explained about that and said that all the lines were above the fort, between that structure and the cemetery. The lines drawn across the river were drawn with special reference to avoiding as much as possible interfering with the fort or the officers' quarters.

IS IT SAFE.

Mr. Dawson expressed some doubts as to advertising for bids before the permission of the government is obtained. Mr. Sewall did not know exactly about that, but thought it would, as there could be but little, if any, doubt that the government would give the permission, and it would take two months to get their materials on the ground.

COST OF THE PIERS.

Mr. Sewall was questioned as to the cost of the piers, which would be the best—all stone or part stone and part iron, the height and size of the piers. The sum and substance of his answer was that he had no figures, and that if he should give any figures, they would be nothing more or less than guess-work. He did give some figures, though, which left a striking impression on the commissioners.

Mr. Cochran stated that from what Mr. Sewall said the six piers that it was proposed to have would cost $66,000, exclusive of the cost of piling.

Mr. Sewall did not think the piers would cost as much as that. The two large piers he thought would cost one-third of the sum mentioned by Mr. Cochran, but that the other four would cost considerably less. He then pointed out how they could economize some in regard to the piers and still they would be substantial. He did not favor making the piers of iron on stone foundations. The piling for the piers will cost about $5,000 each.

THE NAVIGATION OF THE RIVER.

Mr. Sewall stated that he desired to have the bridge high enough and the space between the two main piers as wide as possible, in order to avoid any question in regard to navigation. In his opinion the bridge might be built twenty feet lower than he had estimated, and prove no detriment to navigation. This would lessen the cost of the bridge, and the bridge would be just as suitable and convenient for railway purposes should it be found desirable to use it for that purpose. Of course there could be no doubt in any man's mind that it was desirable to get it down as low as possible. He thought the banks could be cut down twenty feet, but after reflecting a little he modified the statement, by saying that he did not think the government would allow the bank to be cut down so low.

THE COST OF THE BRIDGE.

Mr. Dawson said that Frank Steele had said that the bridge could be built for $80,000.

Mr. Sewall suggested that perhaps it would be better for the commissioners to consider the matter of costs privately.

Mr. Cochran thought so too, and said that it looked to him as though the commissioners lacked the right of way. This being so, they might as well let the whole matter rest for a month.

Mr. Dawson did not agree to this. He believed the best way was to go ahead and work and talk.

Mr. Cochran suggested that Mr. Sewall might communicate with bridge-builders and ascertain the probable cost.

Mr. Sewall said that he could make estimates that would be near enough. If he came within 10 per cent., it would be as near as it is usual with engineers.

Mr. Lindeke suggested that they might advertise for bids for foundations. This probed the very thing that was bothering the commissioners.

Mr. Cochran said that necessitates the services of an engineer. If the engineer's estimates show that the bridge will cost a good deal more than $100,000, he should be in favor of abandoning it. If we are going to advertise for bids, we have got to have an engineer to furnish plans and specifications; otherwise we will not know what is wanted.

Mr. Sewall suggested that the commission might advertise for the building of the piers, and afterwards get bids for the bridge.

Mr. Dawson asked Mr. Sewall what he thought it would cost to make the estimates?

Mr. Sewall said that no engineer would like to make estimates unless he was going to do the work himself and carry out his own ideas. Making the estimates requires the exercise of a good deal of thought and labor, and no engineer would be willing to make estimates without he was going to do the work and superintend everything himself.

In reference more particularly to the cost of the bridge, and in reply to a question put to him, Mr. Sewall said that if 20 feet were added to the length of the bridge it would add 20 per cent. to the cost. He thought they might get the length down to 1,000.

SECRET SESSION.

The commissioners at this point concluded that as the discussion had developed the necessity of having an engineer before anything could be done, it would be better to go into a secret session and talk over the matter. Mr. Dawson, accordingly, extended to all a polite invitation to leave, by asking whether the spectators would take another room or the commissioners. As a matter of course, the spectators were too considerate to disturb the commissioners, and accordingly took their departure. The commissioners sat for about an hour with closed doors, and finally came to the conclusion that they would employ an engineer. Now, the question is, who shall it be?

WASHINGTON, D. C., *April* 23, 1878.

GENERAL: I have the honor to report that I have examined the project for a bridge across the Mississippi at Fort Snelling, and the report upon it by Major Farquhar, United States Engineers.

I entirely agree with him that a bridge at this place 68 feet above high water, and giving a clear span of 200 feet, next the Fort Snelling shore, makes ample provision for the navigation of the river at this point.

Very respectfully,

G. K. WARREN,
Major Engineers, &c.

Brevet Maj. Gen. A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers, United States Army.

Indorsement on letter from Hon. S. J. R. McMillan and Hon. J. H. Stewart, dated March 26, 1878, relative to proposed bridge across the Mississippi River at or near Fort Snelling, Minn.

HEADQUARTERS DEPARTMENT OF DAKOTA,
Saint Paul, Minn., April 27, 1878.

Respectfully returned to the Adjutant-General of the Army, through headquarters Military Division of the Missouri.

Fort Snelling is situated at the confluence of the Minnesota and Mississippi Rivers, on the left bank of the former and the right bank of the latter. Its side is elevated about 100 feet above the low-water level of these streams. At this point the valley of the Mississippi is narrow, and its right bank is precipitous, the ground rising almost perpendicular from the water's edge. On the left bank there is a short interval of level ground from which the slope upward to the general level of the country is very abrupt. The valley of the Minnesota is wide and its waters find their way to the Mississippi through several channels. That portion of the Chicago, Milwaukee and Saint Paul Railroad which lies between the cities of Saint Paul and Minneapolis, crosses the Minnesota just above its mouths, and passes directly beneath the walls of the fort. There is a way or signal station upon this road a few hundred feet from the fort, at which some of the trains will stop if the proper signal be given.

Ordinary communication between the post and Minneapolis is a by a country road leading up the right bank of the Mississippi. Saint Paul is reached by crossing the Mississippi at a swing-ferry directly beneath the fort. The approaches to this ferry are precipitous and bad. From the summit of the bluff opposite the fort to Saint Paul the road is good.

Saint Paul is the capital and principal business center of the State of Minnesota, and the headquarters of the Military Department of Dakota. It is the point with which the fort has its principal intercourse—both official and private—the point upon which it depends. The railway communication is not frequent, it is extremely inconvenient, and is but little used by the garrison. At two periods during each year communication by the ferry is impossible, viz, when ice is forming in the river in the fall, and when it is breaking up in the spring. These periods have sometimes considerable duration.

The fort has accommodations for four companies of infantry, but in addition to the buildings of the fort proper, there is a considerable number of buildings on the reservation which were erected during the civil war, and which will shelter large quantities of stores and a considerable number of additional troops. The military reservation of the post originally comprised large tracts of land on both banks of the Mississippi. By successive sales it has been reduced to 1,531 acres, all contained by the angle formed by the Minnesota and the Mississippi. The fort was originally an extreme outpost in the Indian country. It has, of course, long ceased to bear that character, for it is now surrounded by a thickly populated and very highly civilized region. Its present and prospective utility is as a depot for military supplies, and as a place at arms for the Northwest, where, in case of need, troops can be collected, organized, equipped, drilled, and prepared for the field. It was, I understand, for this latter prospective use that, when the final reduction of the reservation was made, it was determined to retain the 1,500 acres still attached to the fort.

The General of the Army, then the Lieutenant-General, in an official indorsement dated March 10, 1868, used the following language regarding its retention: "Fort Snelling and its reservation in the forks of the Mississippi and Saint Peter's will always be necessary for military purposes." The principal and, indeed, only substantial drawback to the value of the fort for the purposes which I have mentioned, is the difficult, awkward, and inconvenient communication between it and Saint Paul. The bridge which it is proposed to build across the Mississippi will afford a perfect remedy for this difficulty and inconvenience, and will give an easy, safe, and trustworthy communication, open at all seasons of the year. It will at all times be of value to the military service, and in case it should become necessary to collect at the post large bodies of men for the purpose of organization, it will be of very great importance.

Should the post at some time in the future be abandoned, and should the remaining reservation be sold, there can be no doubt that the government would derive profit from the existence of the bridge in the greatly increased price which the land would bring. The formation of the river-banks is such that, in order to obtain the best site for the bridge, it must be brought near to the walls of the fort, and the road leading to it must pass between the fort proper and the outlying buildings. This would lead to some slight inconvenience, but so slight that I think that it ought not to weigh against the interests of the large population to which the bridge is of vital importance, nor against the great advantages which the bridge would afford to the military service. These advantages are, I think, sufficiently great to justify not only a concession of the right of way asked for, but pecuniary aid from the government as well.

ALFRED H. TERRY,
Brigadier General Commanding.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 74.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

COMMUNICATING,

In answer to a Senate resolution of April 17, 1878, information in relation to the decisions of that department upon the rights of Indians to impose taxes in the Indian Territory.

MAY 10, 1878.—Referred to the Committee on Territories and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, May 9, 1878.

SIR: I have the honor to acknowledge the receipt of a resolution adopted in the Senate of the United States, under date of the 17th ultimo, in the following words:

Resolved, That the Secretary of the Interior be, and he hereby is, directed to furnish the Senate with copies of any and all decisions of that department relative to the right of the Indians to impose taxes in the Indian Territory, and also copies of any and all papers on file in the department relating to the so-called permit law.

In accordance with the direction contained in said resolution, I transmit herewith a copy of a letter addressed by this department, under date of September 16, 1874, to the Commissioner upon the subject of tax upon cattle driven through the Cherokee country;

Copy of a letter dated the 18th April, 1876, by the department to F. A. Sears, esq., attorney for the Missouri, Kansas and Texas Railroad Company, in relation to tax attempted to be levied upon the said road by the authorities of the Choctaw Nation;

Copy of letter, dated the 6th instant, from the Commissioner of Indian Affairs, together with the copies of papers noted therein.

The papers herewith transmitted are copies of all papers known to be on file or of record in the department upon the subjects noted in the resolution of the Senate.

Very respectfully,

C. SCHURZ,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1874.

SIR: I have had under consideration the various communications from your office in relation to the tax of 10 cents per head, levied by the

Cherokee Indian authorities, upon all cattle driven from Texas through their Territory to the Northern States, and have reached the conclusion that such a tax is reasonable and justifiable, and that the nation should be sustained in its efforts to enforce and collect the same.

I cannot better express my views on this subject than by adopting the report of the Committee on Indian Affairs in the Senate, made June 22, 1874, which is in these words:

The Committee on Indian Affairs to whom was referred sundry petitions of certain citizens of the State of Kansas, remonstrating against the imposition by the Cherokee Nation of a tax upon cattle driven through their Territory from Texas to northern markets, have considered the subject very carefully, and beg leave to make the following report:

Petitioners allege that the Cherokees, in general council, passed, on the 16th December, 1867, an act or order levying a tax of 10 cents per head upon all cattle and animals driven through their country from Texas to the Northern States; and that by another act passed on the 28th of November, 1869, in relation to the said tax it was in some instances doubled, both of which acts or orders in council they charge are in violation of the laws of the United States.

Copies of the acts or orders in council complained of are not accessible to the committee, but the principal chief and delegation of the Cherokee Nation, in a written statement, in answer to the allegations of petitioners, admit substantially the levies as charged, and proceed to justify the legality of the tax.

As a general proposition, it is quite clear that no community, politically or otherwise organized, whether State, Territorial, or Indian tribes, can legally deny or obstruct, by tax or otherwise, the free transit, whether of person or merchandise, to and from market over any part of the territory of the United States. But the exercise of the right must be enjoyed subject to the local laws and usage legally established in respect to the public highways, the rights of property, and the safety and well being of the inhabitants.

The statement of the chief above referred to sets forth that the States of Missouri and Kansas forbid the driving of Texas cattle into those States from the 1st of May to the last of November; that is, in the months that there is grazing in either of those States; that thousands and tens of thousands of Texas cattle are driven north across the Indian country each year, and being unable to enter Missouri and Kansas are herded and grazed several months in the Cherokee Nation and other parts of the Indian country; that when winter comes on such droves as are late, or too thin for market, find their tax of 10 cents per head and 5 cents per week so much cheaper than cattle can be kept further north, they persist in wintering their stock in the Cherokee Nation; and the ninth section of the act of June 30, 1834, "To regulate trade and intercourse with the Indian tribes and to preserve peace on the frontier," is quoted in justification of the imposition of the tax in part. The section is in these words: "That if any person shall drive or otherwise carry any stock of horses, mules, or cattle, to range or feed on any land belonging to any Indian or Indian tribe, without the consent of the tribe, such person shall forfeit the sum of one doliar for each animal of such stock." Now this is conclusive in regard to that portion of the tax exacted for the privilege of grazing stock within the limits of the Cherokee reserve. The tax is within the amount of the penalty fixed by law for grazing stock without the consent of the nations, even though the stock should be kept upon their grazing land full three months. It only remains then to inquire into the legality of the tax imposed for the right of way through the country, which is 10 cents per head for all stock driven through the territory of the Cherokee Nation from Texas to northern markets. If it were only occasional herds, and so small as to make but little impression upon the native pastures, the committee is not prepared to say that the tax would be either proper or legal any more than would a like tax upon the air or water. But the herds are large and very numerous, and so far as the committee can ascertain, wholly dependent upon the grass on their passage through the entire length of the country. Not only so, but it is charged by the principal chief in the paper before mentioned, that "advantage is taken of the right of passage through to graze all over the country." He says, "Large herds will often move but from three to five miles per day, and zigzag all over the country, so as to take in their course the finest grazing; so that, while only claiming to pass through, they actually spend the greater portion of the summer and autumn in grazing over Indian country." It becomes a very serious affair to a people who are only just abandoning the chase, and for the most part entering the pastoral stage of civilization. The grass is the great crop of the season, and if grazed down during the summer it is not difficult to imagine the condition of the native stock during the winter and spring. The Indians are not more provident than their white neighbors in the Southwestern States, who do not feed their stock in winter. The trade is already very large between Texas and the people of Kansas, and on the increase. The evil may become so serious soon as to trench upon the subsistence of the people whose chief reliance for support is thus consumed annually. No one will insist upon the right to pass, on foot, large herds of almost wild cattle through highly-cultivated sections of country,

where the inhabitants, from the great expense, have, by law or common consent, dispensed with fences, and keep up and feed their own cattle. There are many such communities in the different States. A few herds of five hundred or a thousand head each, driven through such settlements in the summer or fall of the year, would effectually destroy the growing crops, if permitted to wander from the public highway. Yet the damage to the inhabitants would be little greater in fact, though larger in amount, than that suffered by the Indians in the partial or total destruction of their chief crop, the grass, upon which they rely for meat and milk, and in a great degree for bread and other necessaries as well.

Under the conditions above stated, drovers would be obliged to pen and feed their cattle on their passage through cultivated sections of the country. If this be done by drovers in the Indian country there will be no pretext for levying a tax upon the passage of stock. This view of the subject is borne out by the eighth section of the act of June 30, 1834, before referred to, which reads as follows: "That if any person other than an Indian shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt or trap or take and destroy any peltries or game, except for subsistence, in the Indian country, such person shall forfeit the sum of five hundred dollars and forfeit all traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken." This penalty was denounced against intruders upon the hunting-grounds of the Indians, as much for the economy and preservation of the chief reliance of the tribes for subsistence as for the preservation of peace on the frontiers. At that time the chase was the principal occupation of the Cherokees, game and peltries their principal means of support; now, however, the grass crop greatly exceeds in value not only the game and peltries, but probably the receipts from all other industries and trades combined. The Cherokees deem their right to prohibit the introduction of Texas cattle into their territory, equally with Missouri and Kansas, for the same cause, to be indisputable: but being weak and desiring to avoid trouble, the nation considered a small tax levied for the privilege to be in fact a concession to the parties engaged in the trade.

The Department of the Interior has been frequently appealed to, as appears by the letter of the Commissioner of Indian Affairs of 19th May, 1870, but has reached no decision in the matter.

There is no law or department regulation, says the Commissioner, authorizing the tax, but the "various tribes who own the land levy the tax for their consent to permit the stock to pass through their territory."

"If the charges," says the Commissioner, "by the Indians are excessive, this department will consider suggestions that may be made with a view to the adjustment of any difficulties between parties."

The committee deem that the honorable Secretary of the Interior and his subordinates have full power under the law to protect the respective parties from wrong or outrage, and at the same time feel warranted in saying that the spirit, if not the letter, of the law fully justifies the Indians in the levy of the tax, and that the department ought to sustain them in its enforcement so long as it does not exceed the penalty imposed by the law of 30th June, 1834, for grazing stock upon Indian lands, which is $1 per head. The committee consider the tax just and moderate. It is doubtful whether the Indians can long afford to accommodate the increasing trade upon any such terms. There is no necessity for legislation on the subject.

In reference to the method of collecting said tax, I remark that I have not before me the act of the national council levying the same, but I suppose that it provides, as tax laws generally do, that property may be distrained and sold for non-payment of the tax, and, if it does, there can be no objection to the proper Cherokee officer seizing and selling a sufficient number of the animals to pay the tax, and in so doing he should be sustained by the power of the United States Government.

Very respectfully,

R. B. COWEN,
Acting Secretary.

Hon. E. P. SMITH,
Commissioner Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 18, 1876.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant, inclosing what purports to be a copy of an act of the Choctaw Nation imposing a tax upon the property of the Missouri, Kansas and Texas Railroad Company, and in which you apply for an order of this department suspending the operation of said act for reasons therein stated. Your communication has been referred to the Commissioner of Indian Affairs, and I now inclose a copy of his report upon the subject.

Whatever power is possessed by the Choctaw Nation to impose taxes must be derived from some treaty or act of Congress of the United States. The right to impose taxes is not a right which has heretofore been exercised or claimed by the Choctaw Nation, so far as I am advised, and the only authority which has been conferred upon said nation for imposing taxes is found in the forty-seventh article of the treaty with the Choctaw and Chickasaw Indians, dated April 28, 1866, and proclaimed on the 10th day of July following. As the power therein conferred provides only for a proper system of taxation, which must be approved by the President before it shall possess any force or validity, and as until such system is devised and approved said treaty makes ample provision for the payment of the expenses of the government of said nations, as well as the support of a judicious system of education, no necessity would seem to exist for the raising of taxes by the Choctaw Nation. However that may be, the act in question does not comprehend a system of taxation, and has not received the approval of the President, and hence can have no force whatever as law.

The act being, in the opinion of this department, wholly void and incapable of enforcement in the absence of any official information from said nation of its passage, it is not deemed necessary that any order should be made by this department suspending its operation.

I am, sir, very respectfully, your obedient servant,

Z. CHANDLER,
Secretary.

F. A. SEARS, Esq.,
Attorney Missouri, Kansas and Texas Railroad, Sedalia, Mo.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 6, 1878.

SIR: I have the honor to acknowledge the receipt, by reference of 18th ultimo, from the department of a resolution adopted by the Senate of the United States, April 17, 1878, in the following words, to wit:

Resolved, That the Secretary of the Interior be, and he hereby is, directed to furnish the Senate with copies of any and all decisions of that department relative to the right of the Indians to impose taxes in the Indian Territory, and also copies of any and all papers on file in the department relating to the so-called permit law.

In compliance with the directions contained in your reference, I have the honor to forward herewith copies of the following papers:

Exhibit No. 1.—Report of the Commissioner of Indian Affairs, dated March 23, 1877, to the honorable Secretary of the Interior, upon letter from Coleman Cole, principal chief Choctaw Nation, dated January 31, 1877, inclosing copy of letter from Agent S. W. Marston, Union agency,

Indian Territory, to certain citizens of the Chickasaw Nation, and demanding his immediate removal.

Ehibit No. 2.—Decision of the honorable Secretary of the Interior, April 2, 1877, relative to the charges against Agent Marston by Coleman Cole.

Exhibit No. 3.—Acting Commissioner of Indian Affairs's reply, dated May 28, 1877, to Agent Marston's letter of April 28, 1877, inclosing petition of residents of Chickasaw Nation asking relief from the $25 tax imposed by said nation.

Exhibit No. 4.—Commissioner of Indian Affairs's reply, dated June 26, 1877, to letter from W. E. Martin, James's Fork, Arkansas, relative to the right of the Choctaw Nation to tax settlers.

Exhibit No. 5.—Commissioner of Indian Affairs, July 30, 1877, submits to the honorable Secretary of the Interior, for instructions, communication from Agent Marston, dated June 18, 1877, inclosing letter from Dr. T. F. Ealy, a government teacher, complaining of the attempt of Governor Overton, of the Chickasaw Nation, to collect a tax of $25 from him, under the permit law of said nation,.approved October 17, 1876.

Exhibit No. 6.—Decision of the honorable Secretary of the Interior, dated August 27, 1877, in regard to the permit law of the Choctaw and Chickasaw Nations, and instructions to take such steps through the United States agent at the Union agency, Indian Territory, as will compel the said tribes to cease further action under said law.

Exhibit No. 7.—Commissioner of Indian Affairs submits to the honorable Secretary of the Interior, January 12, 1878, a certified copy of an act of the Choctaw Council, approved October 30, 1877, entitled "An act to sell improvements made by non-citizens," with letters from Coleman Cole and Agent Marston, dated 15th and 21st of November last, respectively, relative thereto, and recommends that the act referred to be not approved for the reasons stated.

Exhibit No. 8.—Acting Commissioner of Indian Affairs recommends proper action by the department in regard to the attempted enforcement by the Chickasaw Nation of the so-called permit law, approved by the governor of said nation October 17, 1876.

Exhibit No. 9.—Agent Marston, December 30, 1876, asking instructions as to whether the tribal authorities may tax licensed traders and other United States citizens *ad libitum* without rebuke.

Exhibit No. 10.—Agent Marston, January 3, 1877, asking if the permit law of the Chickasaw tribe, taxing teachers, mechanics, and farmers $25 a year, has had the approval of the United States Government.

Exhibit No. 11.—The President of the United States refers letter from C. Cole, principal chief Choctaw Nation, dated January 31, 1877, asking the removal of Agent Marston, Union agency, to the Secretary of the Interior.

Exhibit No. 12.—Agent Marston, February 19, 1877, submits statement relative to his decision in regard to the Chickasaw Nation imposing and collecting taxes; also incloses copy of "general permit law of the Chickasaw Nation," and copy of communication from D. C. Cooper, Fort Washita, Ind. T., of February 12, 1877, relative to said permit law.

Exhibit No. 13.—Agent Marston, March 30, 1877, asking for instructions as to the tax-law of the Chickasaw Nation, and inclosing copy of his letter of January 18, 1877, to certain residents in that nation giving his opinion of said law.

Exhibit No. 14.—Agent Marston, April 16, 1877, relative to the tax-law of the Chickasaw Nation.

Exhibit No. 15.—Agent Marston, April 28, 1877, forwards petition of certain Chickasaw citizens for protection of United States Government against the enforcement of the $25 tax law.

Exhibit No. 16.—Communication from Governor B. F. Overton, Chickasaw Nation, dated May 21, 1877, relative to his action in removal of intruders and collecting tax.

Exhibit No. 17.—W. E. Martin, of Skullyville, Indian Territory, June 13, 1877, asks if Choctaw Nation has a right to tax non-citizens.

Exhibit No. 18.—Agent Marston, June 18, 1877, asks whether a tax of $25 shall be paid to the Chickasaw Nation for one of the government teachers, Dr. T. F. Ealy, and incloses copy of letter from him.

Exhibit No. 19.—W. C. Probst, of Dexter, Tex., July 14, 1877, relative to his being put out of the nation by the governor of the Chickasaw Nation.

Exhibit No. 20.—H. A. Rogers, of Fort Smith, Ark., July 29, 1877, relative to action of Choctaw Nation in taxing white citizens residing in said nation, states that they are threatened with immediate expulsion unless the tax is paid, and asks protection of the Department of the Interior.

Exhibit No. 21.—H. A. Rogers, of Fort Smith, Ark., August 4, 1877, relative to removal of persons from Choctaw Nation for non-payment of of tax, &c., and inclosing copy of an order from Thomas J. Wall, sheriff of Skullyville County, Choctaw Nation, to leave within ten days.

Exhibit No. 22.—Agent Marston, August 8, 1877, as to intruders in Skullyville County, Choctaw Nation, inclosing petition and other papers from United States citizens residing in said nation.

Exhibit No. 23.—Letter from Coleman Cole, principal chief Choctaw Nation, dated Atoka, September 24, 1877, in regard to the decision of the Secretary of the Interior, as to the validity of the permit law of the Chickasaw Nation.

Exhibit No. 24.—Agent Marston, October 8, 1877, refers to the department a communication from J. D. Harris, dated October 4, relating to the Chickasaw permit law, and asks instructions.

Exhibit No. 25.—Agent Marston, October 8, 1877, transmits to the Secretary of the Interior a communication from William C. Edwards, dated October 4, relating to the permit law of the Chickasaw Nation.

Exhibit No. 26.— B. F. Colbert, Colbert's Station, Ind. T., November 2, 1877, asks information relative to the Chickasaw tax law.

Exhibit No. 27.—Agent Marston, November 8, 1877, transmits memorial of certain Chickasaw citizens, with other papers, relating to the so-called permit law.

Exhibit No. 28.—Hon. D. W. Voorhees, United States Senate, January 21, 1878, incloses letter from J. W. Rogers, dated January 9, complaining of the tax imposed upon white laborers by the Choctaw and Chickasaw Nations.

Exhibit No. 29.—The President of the United States, January 29, 1878, refers letter from Coleman Cole, principal chief of Choctaw Nation, dated January 10, 1878, inclosing copy of a resolution of general council of Choctaw Nation, relating to the setting aside of the decision of the Secretary of the Interior of August 27, 1877, upon the validity of permit laws, and inclosing other papers relating thereto.

Exhibit No. 30.—Lem Reynolds, January 30, 1878, presents petition and papers relative to the permit law in the Chickasaw Nation, with twelve inclosures.

Exhibit No. 31.—Agent Marston, February 6, 1878, asks authority to enforce the order prohibiting the Chickasaw authorities from taxing United States citizens.

Exhibit No. 32.—Agent Marston, February 26, 1878, refers letter from Robert L. Boyd, national secretary Chickasaw Nation, to Hon. L. C. True, Chetopah, Kans., relating to Governor Overton's persisting to collect the $25 tax.

Exhibit No. 33.—Hon. Jordan C. Cravens, House of Representatives, incloses a communication addressed to the Secretary of the Interior from P. M. MacGeery, esq., dated Fort Smith, Ark., February 26, 1878, relative to the removal of white men who have leased lands of Indians from the Indian Territory, and asks early consideration.

Exhibit No. 34.—Hon. A. H. Garland, United States Senate, March 4, 1878, refers letter of Lem Reynolds, of March 1, asking department to afford relief to citizens of Chickasaw Nation from tax on labor, and asks for information relative thereto.

Exhibit No. 35.—Peter B. Arthur, Marysville, Tex., March 4, 1878, in relation to the Chickasaw permit law.

Exhibit No. 36.—Hon. D. W. Voorhees, United States Senate, March 5, 1878, refers to the Department of the Interior a letter of Lem Reynolds of March 2, relating to the Chickasaw permit law, and asks for such information as may be consistent with public duty.

Exhibit No. 37.—W. F. Cornish, Burneyville, Ind. T., March 17, 1878, relative to the Chickasaw permit law.

Exhibit No. 38.—William Williams, jr., Fort Sill, Ind. T., March 29, 1878, asks if Chickasaw authorities can eject him for non-payment of the $25 tax.

Exhibit No. 39.—John Malcolm, Colbert's Station, Ind. T., April 20, 1878, relative to Chickasaw permit law, asks if he can be compelled to pay the $25 tax.

The foregoing list embraces all letters and reports to the honorable Secretary of the Interior from the Commissioner of Indian Affairs, the dicisions of the department relative to the right of the Indians to impose taxes in the Indian Territory, as well as all communications relating to the so-called permit law received by the department up to the present day.

The resolution of the Senate is herewith respectfully returned.

Very respectfully, your obedient servant,

WM. M. LEEDS,
Acting Commissioner.

The honorable the SECRETARY OF THE INTERIOR.

EXHIBIT No. 1.

DEPARTMENT INTERIOR, OFFICE INDIAN AFFAIRS,
March 23, 1877.

SIR: I have the honor to acknowledge the receipt, by your reference, from the President, for report, of a letter dated the 31st ultimo, from Coleman Cole, principal chief of the Choctaw Nation, inclosing a copy of a letter from S. W. Marston, United States Indian agent, to certain citizens of the Chickasaw Nation, and demanding the immediate removal of the agent for having written this letter.

The substance of the charge made by the chief against Agent Marston is that the legislature of the Chickasaw Nation having by act approved by the principal chief, October 17, 1876, imposed a "tax of $25 each upon white persons skilled in agriculture," who are not citizens of that Nation, but are employed by citizens thereof, the agent had declared said act to be null and void, inasmuch as it had not been approved by him and was without authority of law.

This decision Chief Cole alleges to be equally applicable to the Choctaw Nation, and hence his demand for the removal of the agent.

The treaty provisions regulating the presence of persons not members of the Choctaw and Chickasaw Nations within their territorial limits are found in article 7 of the treaty of 1855 (Stat. at Large, vol. 11, page 612), and in article 43 of the treaty of 1866 (Stat. at Large, vol. 14, page 771). The former article, which is in force, subject to the modifications made by the latter, gave to the Choctaws and Chickasaws the "unrestricted right of self-government and full jurisdiction over persons and property within their respective limits." Exception was made in this article, however, to all persons with their property who were not members of the Choctaw or Chickasaw tribes. Such persons were to be considered as intruders and removed by the United States agent, with certain exceptions, these being (1) employés of the government and their families, (2) persons traveling or residing in the Territory under license from the proper authority of the United States, and (3) persons residing there by the permission of the Choctaw or Chickasaw authorities with the consent of the United States agent.

It seems to me that this article was intended to grant or guarantee to the Indians full control over any persons who were allowed to remain within their respective territorial limits, and that persons who were not citizens of the nations could escape taxation only by removal from their territory.

By article 43 of the treaty of 1866 the United States stipulated to remove all white persons, except government officials, or officers of any internal-improvement company, or persons traveling through or temporarily sojourning in the Territory, exception being made, however, in favor of teachers, mechanics, or persons skilled in agriculture. In respect to these, the United States and the Indians both agreed that the power of the United States should not be exerted in behalf of their removal. Whether they should go or stay is a question to be settled by the parties in interest. If the Chickasaws should deem it best to effect their removal, it is entirely competent for them so to do. If, on the other hand, the Chickasaws see fit to let them stay, I do not see how the persons thus favored can complain if they are called upon by the Chickasaws to bear their share in support of the national government. If such persons desire the protection of the United States, they can readily obtain it by removing to some State or Territory where no Indian nation, invested by solemn treaty with the "unrestricted right of self-government and full jurisdiction over persons and property," can claim authority over them. Having voluntarily fled their responsibility as citizens of the United States, and come under the jurisdiction of this Indian nation, they cannot expect the government to violate a treaty to relieve them from the consequences of their own act.

Upon the propriety or wisdom of this legislation I do not venture to express an opinion. The settlement of that question is left exclusively to the Indians by the 7th article of the treaty of 1855.

The action of the agent, therefore, appears not to have been fully warranted, but there is no reason to suppose that it was due to anything further than erroneous judgment upon a question of law, and I see no reason for acceding to the demand of the principal chief of the Chickasaws for his removal.

A copy of this report will be sent for his guidance.

Very respectfully,

J. Q. SMITH,
Commissioner.

The Honorable the SECRETARY OF THE INTERIOR.

EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR,
Washington, April 2, 1877.

SIR: Your letter of the 23d ultimo, reporting upon the charges preferred by Coleman Cole, principal chief of the Choctaw Nation, against his agent, Mr. S. W. Marston, of the Union agency in the Indian Territory, has been received.

It would appear that Agent Marston's offense was at most only an error of judgment upon a point of law, and I have this day written Chief Cole to that effect, informing him also that the agent cannot be removed for such cause.

Very respectfully, &c.,

C. SCHURZ,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

EXHIBIT No. 3.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 28, 1877.

SIR: Your letter of the 28th ultimo, inclosing petition of residents of the Chickasaw Nation asking relief from the $25 tax imposed by said nation, has been received.

While I regret that any laws of the said nation may bear heavily on these parties, yet I incline to the opinion that any merely impolitic or indiscreet legislation should more properly be corrected without interference on the part of the general government.

Very respectfully,

S. A. GALPIN,
Acting Commissioner.

S. W. MARSTON,
United States Indian Agent, Union Agency, Muscogee, Ind. T.

EXHIBIT No. 4.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 26, 1877.

SIR: Your letter of the 13th instant, asking information relative to the right of the Choctaw Nation to tax settlers, is received. It is the opinion of the department that, however politic or otherwise such action may be on the part of the Choctaw authorities, their right to impose such a tax is unquestioned.

Very respectfully,

J. Q. SMITH,
Commissioner.

W. E. MASTIN,
James Fork P. O., Sebastian County, Ark.

EXHIBIT No. 5.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
July 30, 1877.

SIR: I have the honor to submit herewith, for your consideration and instruction, communication dated June 18, 1877, from S. W. Marston, esq., United States Indian agent at the Union agency, Indian Territory, inclosing letter of Dr. S. F. Ealy, complaining of the attempt of Governor Overton, of the Chickasaw Nation, to collect a tax of $25 from him, under the permit law of said nation, approved by the governor, October 11, 1876, a copy of which law is herewith inclosed.

Dr. Ealy was appointed by Agent Marston as teacher of the freedmen's school at Fort Arbuckle, Ind. T., at a salary of $100 per month, commencing January 26, 1877, and continuing for the remainder of the fiscal year. He was borne upon said agent's rolls as an employé, and paid out of the appropriation of $20,000 "for the support of industrial schools, and other educational purposes among the Indians," made by the Indian appropriation act of August 15, 1876. (19 Statutes, 197.)

As an employé of the United States Government, Dr. Ealy was, in the opinion of this office, clearly exempt from taxation by the Chickasaw Nation, under treaty stipulations, as well as by the settled principles of law which define and regulate the relations existing between the general government and the Indian tribes.

It is, however, deemed an opportune occasion to call the attention of the department to the law in question, not only as it affects the case now under consideration, but with reference to all other cases which may be claimed to fall within its purview, and to request the opinion of the honorable the Secretary of the Interior as to whether it possesses any validity whatever, or is null and void *in toto.*

In this connection, I have the honor to refer to some decisions bearing upon the general subject of the taxing powers of the Chickasaw and Choctaw Nations. and to call attention to the uncertainty resulting from them, and the importance of a final determination of the question, so that a uniform rule may be applied in dealing with the subject as it may present itself hereafter.

On the 10th of April, 1876, F. A. Sears, esq., attorney for the Missouri, Kansas and Texas Railroad Company, addressed the department in a letter which inclosed what purported to

be a copy of an act of the Choctaw Nation, imposing a tax upon the property of said railroad, and asked for an order suspending the execution of said law. His letter was referred to this office for a report, which was made April 13, 1876, and on the 18th of the same month the honorable the Secretary of the Interior rendered a decision to the effect that whatever power of taxation said nation possessed was derived from the forty-seventh article of the treaty of April 28, 1866; that the power conferred by said article contemplated only a proper system of taxation, to be approved by the President; that the treaty provided ample funds for the expenses of the government of said nation, as well as for a judicious system of education, and therefore no necessity for taxation seemed to exist; that the act in question did not comprehend a system of taxation, and had not received the approval of the President, and consequently was wholly void and incapable of enforcement, and therefore required no order of the department to suspend its operation.

Shortly after the passage of the permit law now under consideration, its attempted enforcement caused great complaint, and the matter having been brought to the attention of Agent Marston, he declared it to be in violation of treaty stipulations and void. For this cause, Coleman Cole, principal chief of the Choctaw Nation, addressed a communication to the President, under date of the 31st January, 1877, demanding the immediate removal of said agent. This communication was, in due course, referred to this office for report, which was made March 23, 1877, to the effect that the law was valid, and that the Chickasaw Nation did possess the general power of taxation, however impolitic its exercise might be, but that as the agent was only guilty of an error of judgment upon a question of law, it constituted no sufficient cause for his removal. The decision of the department upon this report was communicated to this office on the 2d April, 1877, in the following language: "It would appear that Agent Marston's offense was, at most, only an error of judgment upon a point of law, and I have this day written Chief Cole to that effect, informing him also that the agent cannot be removed for such cause."

The confusion likely to flow from these conflicting views, and the importance of a settled rule upon the subject, render evident the necessity for an early definitive determination of the question of the right of taxation by said Indians, and I have, therefore, the honor to request full instructions in the premises. I respectfully ask the return of the inclosed papers, with your instructions.

Very respectfully, your obedient servant,

J. Q. SMITH,
Commissioner.

The honorable the SECRETARY OF THE INTERIOR.

EXHIBIT No. 6.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1877.

SIR: I am in receipt of your communication of the 31st ultimo, submitting for the consideration of this department a letter from S. W. Marston, United States Indian agent at the Union agency, Indian Territory, dated June 18, 1877, inclosing a letter of Dr. T. F. Ealy, who complains of the attempt of Governor Overton, of the Chickasaw Nation, to collect a tax of $25 from him under the requirements of what is known as the "permit law," enacted by the Chickasaw legislature, and approved by Governor Overton, October 17, 1876, a copy of which was transmitted.

From the papers transmitted it appears that Dr. Ealy is, and was at the time of the alleged attempt to collect the tax in question, an employé of the Indian Office, acting as a teacher, at a salary of $100 per month, under the control of Agent Marston.

You submit for my consideration and opinion the question whether said permit law possesses any validity whatever, or is null and void *in toto*. You also call my attention to a decision of my predecessor, contained in a letter dated April 15, 1876, and addressed to F. A. Sears, esq., attorney for the Missouri, Kansas and Texas Railroad Company, which is as follows:

"Whatever power is possessed by the Choctaw Nation to impose taxes, must be derived from some treaty or act of Congress of the United States. The right to impose taxes is not a right which has heretofore been exercised and claimed by the Choctaw Nation, as far as I am advised, and the only authority which has been conferred upon said nation for imposing taxes, is found in the forty-seventh article of the treaty between the Choctaw and Chickasaw Indians, dated April 28, 1866, and proclaimed on the 10th of July following. As the power therein conferred provides only for a proper system of taxation which must be approved by the President before it shall possess any force or validity, and as, until such system is devised and approved, said treaty makes ample provision for the payment of the expenses for the government of said nation, as well as the support of a judicious system of education, no necessity would seem to exist for the raising of taxes by the Choctaw Nation. However that may be, the act in question does not comprehend a system of taxation and has not received the approval of the President, and hence can have no force whatever as law."

The only other decision of this department having any relation to the subject of taxation under said treaty was made April 18, 1877. This decision was made upon the following statement of facts:

Mr. Marston, the present Indian agent, whose letter is one of the inclosures submitted by you, decided that the permit law passed by the Chickasaw Nation was void, because it had not been submitted to him for his approval.

Upon the promulgation of the agent's decision, Chief Cole, of the Choctaw Nation, asked his removal in a letter addressed to the President of the United States. This letter was referred to you for a report. In your report, after a general review of the powers of legislation conferred upon the Choctaws and Chickasaws by the seventh article of the treaty of 1855, and the forty-third article of the treaty 1866, you made use of the following language:

"Upon the propriety or wisdom of this legislation I do not venture to express an opinion; the settlement of that is left exclusively to the Indians by the seventh article of the treaty of 1855. The action of the agent, therefore, appears not to have been fully warranted, but there is no reason to suppose that it is due to anything more than erroneous judgment upon a question of law, and I see no reason for acceding to the demand of the principal chief of the Choctaws for his removal."

It will thus be seen that the question then presented was not so much the validity of the law, as whether the agent should be removed for what was considered an improper assumption of authority, and as the President and not the agent is the proper authority to decide whether the law should be approved, and the retention or removal of the agent was the subject under discussion, the decision of this department was expressed as follows:

"It would appear that Agent Marston's offense was, at most, only an error of judgment upon a point of law, and I have this day written to Chief Cole to that effect, informing him that the agent cannot be removed for such cause."

There is nothing in this decision which indicates a different opinion from that expressed by my predecessor. If a different ruling was understood to have been intended, it must have arisen from the interpretation placed by you upon the meaning and intent of the seventh article of the treaty of 1855, and forty-third article of the treaty of 1866. Upon this point your report reads as follows: "It seems that this article (7) was intended to grant or guarantee to the Indians full control over any persons who were allowed to remain within their respective territorial limits, and that persons who are not citizens of the nations could escape taxation only by removal from their territory." This language requires an examination of the provisions, restrictions, and limitations of article 7, in order to determine how far your interpretation can be sustained. Article 7 reads as follows:

"So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating the trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self government, and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribe; and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States agent, assisted if necessary by the military, with the following exceptions, viz: such individuals as are now or may be in the employment of the government, and their families; those peacefully traveling and temporarily sojourning in the country, or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes."

By which article it will be seen that all persons with their property who are not by birth, adoption, or otherwise, citizens or members of either the Choctaw or Chickasaw tribe, were excepted from the government and control of either the Choctaws or Chickasaws.

The evident intent of the article was to limit the government and jurisdiction of said nations to persons who are members of either of the respective tribes. In so far, therefore, as your report expresses the opinion that said Indians had "full control" over any persons who are allowed to remain in their respective territorial limits, and that persons who are not citizens of the United States could escape taxation only by removal from their territory, I think you were in error. Persons not members of either of said tribes, unless agents or employes of the government, with their families, possessed no rights within the limits of their territory, and if not peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States, or remaining there by the permission of the Choctaws or Chickasaws, with the assent of the United States agent, without becoming citizens or members of either of said tribes, might be expelled from said territory. But this was to be done by the United States agent, assisted, if necessary, by the military. The Indians had no right or authority to expel such persons by virtue of the seventh article of the treaty of 1855.

In relation to the forty-third article of the treaty of 1866, your report says:

"By article forty-three of the treaty of 1866, the United States stipulated to remove all white persons except government officials, or officers of any internal-improvement company, or persons peacefully traveling or temporarily sojourning in the Territory; exception being

made, however, in favor of teachers, mechanics, or persons skilled in agriculture. In respect to these, the United States and the Indians both agree that the power of the United States should not be exerted in behalf of their removal. Whether they should go or stay is a question to be settled by the parties in interest. If, the Chickasaws should deem it best to effect their removal, it is entirely competent for them to do so. If, on the other hand, the Chickasaws see fit to let them stay, I do not see how the persons thus favored can complain if they are called upon by the Chickasaws to bear their share in support of the national government. If such persons desire the protection of the United States, they can readily obtain it by removing to some State or Territory where no Indian nation, invested by solemn treaty with the unrestricted right of self-government and full jurisdiction over persons and property, can claim authority over them. Having voluntarily fled their responsibility as citizens of the United States, and come under the jurisdiction of this Indian nation, they cannot expect the government to violate a treaty to relieve them from the consequences of their own act."

The forty-third article of the treaty of 1866 reads as follows :

"The United States promise and agree that no white persons except officers and agents and employés of the government, and of any internal-improvement company, or persons traveling through or temporarily sojourning in said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of both nations into one of the said nations of the Choctaws and Chickasaws, according to their laws and customs or usages; but this article is not to be construed to affect parties heretofore adopted or to prevent the employment, temporarily, of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or to be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of said nations, according to their laws and customs and usages."

By this article the United States agreed to prohibit all persons except certain classes named from entering their territory, but at the same time it was provided that this prohibition should not extend to or be construed to include persons who had been theretofore adopted, nor those temporarily traveling or sojourning therein, nor to prevent the employment temporarily by the Choctaws or Chickasaws of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing works of internal improvement, such as they might deem essential to their welfare and prosperity. There is nothing in this article authorizing either the Choctaw or Chickasaw nation to expel from their territory any persons whom they might find there, nor are the means indicated by which the United States are to prohibit persons from entering the same.

It may be reasonable to suppose, therefore, that the same means would be used to prohibit persons from entering either territory that are mentioned in the seventh article of the treaty of 1855, viz, the Army of the United States. But this authority was not to be exercised as to such persons as had been adopted into either of said nations, or to prevent the employment temporarily of white persons who were teachers, mechanics, or skilled in agriculture, &c. In other words, the United States did not agree to prohibit these classes of persons from entering the territory of said nations.

If, therefore, there are persons now residing within the limits of the territory of either of said nations, who are teachers, mechanics, or skilled in agricultnre, and they are employed, the United States will not undertake to remove them, nor can either of said nations expel them unless for crime committed. If there are persons residing within the limits of the territory of either of said nations contrary to the provisions of the treaties of 1855 and 1866, who should be removed, it is the duty of the Choctaws and Chickasaws to call the attention of the government to them and ask for their removal.

The treaties with the Choctaws and Chickasaws set forth that the stipulations were to advance their permanent welfare, promote general civilization, and protect the best interests of their people, to encourage habits of industry, stimulate education and a knowledge of the useful arts. It was for these reasons that the restrictions were so far modified in the classification of persons that were to be allowed to enter the Choctaw and Chickasaw country.

Without entering upon a discussion of the law of taxation, I concur in the opinion of my predecessor, that the forty-seventh article of the treaty of 1866 prescribes the only mode by which a system of taxation can be adopted by either of said nations, and that until the provisions of that article are complied with, neither of said nations have any authority to pass or enforce a law on that subject. There are conditions precedent and subsequent to be performed before such a right will exist, neither of which have been complied with. You will therefore take the necessary steps, through the United States Indian agent, at the Union agency, Indian Territory, to inform the Choctaws and Chickasaws that further action under the permit law above mentioned must cease.

I herewith return the papers transmitted with your letter of the 31st ultimo.

Very respectfully,

C. SCHURZ,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

AN ACT to sell improvements made by non-citizens.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That all non-citizens not in the employ of citizens, who have made improvements in said nation, are hereby notified that they are allowed until the last day of January, 1878, to sell their improvements to citizens, and if such non-citizens fail to comply with the provisions of this act, then it shall be the duty of the sheriffs to advertise such improvements for sale in thirty days, and sell the same at the appointed time, on the premises, to the highest Choctaw bidder, for cash, one-half to be turned into the county treasury, and the other half into the national treasury: *Provided, however*, That if such non-citizens fail and refuse to deliver up the occupancy of said improvements, then such non-citizens shall be reported by the sheriffs to the principal chief, and by him to the United States Indian agent for his removal and action against them under section 2118, United States Revised Statutes

SEC. 2. *Be it further enacted*, That all subsequent violations of this act shall be treated in the same way as provided above, and the principal chief is hereby required to send an authenticated copy of this act to the United States agent, with the request that he secure the approval of such a representative of the United States Government hereupon as will insure its enforcement at as early a day as practicable.

SEC. 3. *Be it further enacted*, That this act take effect and be in force from and after its passage.

(Proposed by John Dawson, chairman committee on judiciary.)

Approved, Oct. 30th, 1877.

COLEMAN COLE,
Principal Chief Choctaw Nation.

I hereby certify that the foregoing act is true and correct copy taken from the original filed in secretary's office, at Chata Tamaha, this 31st October, 1877. In testimony whereof I have caused the seal of the Choctaw Nation to be affixed.

[SEAL OF CHOCTAW NATION.]

THOMPSON McKINNEY,
National Secretary Choctaw Nation.

OFFICE OF INDIAN AFFAIRS, UNITED STATES UNION AGENCY,
Muscogee, Indian Territory, April 18, 1877.

SIR: Yours of the 2d instant was duly received, and would have been sooner answered if I had not expected to be at your office last Saturday, and talk with you face to face upon the subject-matter and character of your communication; but as I was disappointed in my expectation of seeing you, I now write simply to say, in my answer to your inquiry, as to what amount of taxation upon the United States citizens I am willing to approve. I am willing to approve whatever amount may be assessed by the proper authorities of your tribe upon licensed traders, in accordance with the sixteenth article of the treaty of 1855. All other United States citizens, except licensed traders, are to be considered as intruders, unless permitted by your authorities to remain in your country, upon such terms as you may dictate.

Very respectfully,

S. W. MARSTON,
United States Indian Agent.

Hon. COLEMAN COLE,
Principal Chief Choctaw Nation, Atoka, Indian Territory.

EXECUTIVE OFFICE, C. N.,
November 15, *A. D.* 1877.

DEAR SIR: I do hereby respectfully inform your honor, and herewith inclosed an authenticated copy of the last act of the Choctaw council, approved October 30, 1877, with request that you will please secure the immediate approval of the United States Government, so as to insure its enforcement at as early a day as practicable. And also, I herewith enclose a copy of your letter dated Muscogee, April 18, 1877, to this office. Speaking of the treaty of 1855, article 16th says: "All other United States citizens except licensed traders are to be considered as intruders, unless permitted by our authorities to remain in our country upon such terms as we may dictate." This was as much as to say, upon such terms as we may see fit to charge them for being permitted to stay in the nation. See the same treaty, article 7th, read as follows: "So far as may be compatible with the Constitution of the United States, and laws made in pursuance thereof regulating trade and intercourse with the Indian tribes, the Choctaws and the Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits."

The great talk is that the great progress of white men over this continent, but reason the case. While that is so, we have certain rights (which the white man has no interest in) which are secured to us by treaties, which are declared by the United States Constitution to be supreme law of the land.

The country we hold in common with us is in fee-simple with the appurtenances to the Choctaws and the Chickasaws' people or nations, and to the heirs and their descendants, and the meaning is to no other people.

The great talk in Washington of territorializing the Indian Territory is all song. It was that same the United States Congress give us, the fee-simple title to this land we occupy to live on it and work the soil, and here we are. The United States Congress nor any other power, but by force, can take it away from us. We have our system of government, which our treaties recognize, and the United States, by solemn treaties, has promised to uphold and sustain us in it forever, just as much as she has declared to protect the State-rights as well as the individual rights.

Immediate answer is required. I am in duty bound ever pray.

I have the honor to be your most humble servant,

COLEMAN COLE.
Principal Chief Choctaw Nation.

Rev. S. W. MARSTON,
United States Agent, Indian Territory.

OFFICE INDIAN AFFAIRS, UNITED STATES UNION AGENCY,
Muscogee, Indian Territory, November 21, 1877.

SIR: At the request of Hon. Coleman Cole, chief Choctaw Nation, I herewith transmit an authenticated copy of "the last act of the Choctaw council, approved October 30, 1877," and with the chief's copy of my letter of April 18.

That you may understand the wishes of the chief more fully than I could inform you, I take the liberty of forwarding also his communication to this office of 15th instant, transmitting said papers. He requests that I "secure the immediate approval of the United States Government" of said act, "so as to insure its enforcement at as early a day as practicable."

To show that the Choctaws have the "unrestricted right of self-government and full jurisdiction over persons and property" within their limits, he quotes from the seventh article of the treaty of 1855, but stops before he reaches the exceptions made in said treaty, which leaves them jurisdiction only over their own citizens. It is clearly a violation of United States intercourse laws for citizens of the United States to go into and make improvements upon Indian lands, and the Indian tribes should be protected in all the rights and privileges guaranteed them under treaties, and citizens of the United States should be protected in the rights and privileges they may have. Some, I understand, have made improvements, under contracts entered into with citizens of the Choctaw Nation to improve for them and have the benefit of said improvements for a certain length of time—some two, three, and even five years—the citizen to procure from the Choctaw authorities permits for them to live upon said improvements. But when a tax was imposed upon these citizens of the United States by legislative authority of the Choctaw Nation, the citizens for whom they were making these places failed to procure the permits. My letter to the department of August 7, and exhibits Nos. 1, 2, and 3 accompanying it, may give you some light upon this. The freedmen who were formerly slaves of the Choctaws have never been adopted by the Choctaw legislature. All are living among them, and have made improvements.

The matter is respectfully submitted for your action.

I have the honor to be, very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. E. A. HAYT,
Commissioner Indian Affairs, Washington, D. C.

EXHIBIT NO. 7.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 12, 1878.

SIR: I have the honor to submit herewith, for your consideration and action, a certified copy of an act of the Choctaw council, approved October 30, 1877, entitled "An act to sell improvements made by non-citizens," with letters, dated respectively the 15th and 21st ultimo, relative thereto, from Hon. Coleman Cole, the principal chief of the Choctaw Nation, and S. W. Marston, United States Indian agent at Muscogee. This appears to be an at-

tempt upon the part of the Choctaw Nation to assume jurisdiction over the person and property of individuals who are not citizens of either the Choctaw or the Chickasaw Nation.

The seventh article of the Choctaw and Chickasaw treaty of June 22, 1855 (vol. 11, p. 611, United States Stats. at Large), provides that "so far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons, with their property, who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribe." * * *

This limitation to the jurisdiction of the Choctaw Nation has not been modified by the treaty of 1866 or by any act of Congress so as to authorize said nation to exercise any political authority whatever over non-citizens, and any attempt by the Choctaw Nation to legislate concerning them is clearly in violation of this article of the treaty.

The employment temporarily of "white persons who are teachers, mechanics, or skilled in agriculture" is permitted under the forty-third article of the treaty of April 28, 1876, with the Choctaws and Chickasaws (vol. 14, p. 769, Stats. at Large), and it appears from the agent's letter that certain citizens of the United States who were authorized so to do by said article have made improvements under contracts with members of the Choctaw Nation, the benefits of which the employés were to enjoy for a certain number of years. The agent also states that the Choctaws agreed in said contracts to procure from their national authorities permits for these citizens to live on said improvements during the time they were to occupy the same under their agreements, but when the legislature of the Choctaw Nation imposed a tax on citizens of the United States, they failed to procure said permits.

These improvements and also the improvements made by the freedmen who were formerly slaves of the Choctaws are liable to be sold under this act.

The Choctaw Nation has a remedy against persons who are in their country without authority of law under the provisions of section 2149 of the Revised Statutes, and they could readily have all intruders removed therefrom by applying to the agent or this office.

I therefore respectfully recommend that this act of the Choctaw Nation be not approved, and that Agent Marston be instructed to notify the proper authorities of said nation that the sale of improvements owned by persons who are in the Choctaw Nation under authority of law will not be permitted.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The honorable the SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 19, 1878.

SIR: By letter of the 30th of July, 1877, this office submitted for your consideration a communication dated June 18, 1877, from S. W. Marston, United States Indian agent, Union agency, Indian Territory, having reference to the permit law enacted by the Chickasaw National Council, and approved by the governor of said nation October 17, 1876.

Subsequently, under date of August 27, 1877, the department held, in brief, that the action of the Chickasaw legislature was unauthorized by the treaties with that nation, and, consequently, that the so-called permit laws were null and void, and directed this office to "take the necessary steps through the United States Indian agent at the Union agency, Indian Territory, to inform the Choctaws and Chickasaws that further action under the permit law above mentioned must cease."

In pursuance of these instructions Agent Marston was directed, by letter of the 3d of September last, to notify the authorities of the Choctaw and Chickasaw Nations of the decision of the department, and to require a prompt and strict compliance therewith. This duty the agent performed, as he reports on September 18, 1877.

I have since that date received several communications from citizens of the nation and from the United States Indian agent, showing conclusively a determination on the part of the Chickasaw governor not only to ignore the action of the department in the matter of the permit laws, but to continue to enforce the same.

I am also in receipt, by your reference from the President, of a letter from Coleman Cole, chief Choctaw Nation, dated January 10, 1877, protesting against the decision of August 27, 1877.

A petition, accompanied by a number of exhibits, dated January , 1878, and signed by fifty-one persons, citizens or residents within the Chickasaw Nation, has recently been filed, asking the intervention of the department to protect them against the further enforcement of the permit law. It appears from these and other papers in the case that the courts of the nation are instructing their juries to bring indictments against persons failing to take out

permits; that the judge of Penola County has issued a proclamation notifying all persons to take out such permits prior to the February term of the circuit court (which it is understood meets on the third Wednesday of this month), and that Governor Overton has expressed his intention to enforce the law as against the citizens of the nation employing citizens of the United States, if he may not levy the tax upon those primarily intended to be reached by the permit law. The governor thus seeks to accomplish by indirection what he was inhibited from doing by departmental decision of the 27th of August, 1877.

It was held in the above-named decision that the only authority granted the Choctaw and Chickasaw Nations, by treaty or otherwise, for the levying of taxes, was to be found in the forty-seventh article of the treaty of April 28, 1866, and that as "the act in question does not comprehend a system of taxation, and has not received the approval of the President, it can have no force whatever as law." It follows, therefore, that the attempt of the Chickasaw authorities to enforce the permit law, in contravention of the decision and direction of the department, and in absence of the approval of the President, is in direct violation of the provision of the treaty of 1866 and the rights and powers theretofore recognized as existing in the nation. I am not aware of the existence of any treaty or law affording any remedy or method of procedure in cases of violation on the part of the authorities of the several tribes of Indians of the stipulations of the treaties where open hostilities are not resorted to by the tribe, yet it would seem that in the nature of things, and in view of the relation existing between the government and the Indians, such power must inherently exist in the government.

Section 2080, Revised Statutes, provides that "whenever the tribal organization of any Indian tribe is in actual hostility with the United States, the President is authorized by proclamation to declare all treaties abrogated by such tribe, if, in his opinion, the same can be done consistently with good faith and legal and natural obligations."

While the position assumed by the Chickasaw authorities in this matter is not an act of open hostility, it amounts to a flagrant violation on the part of the legislative, judicial, and executive branches of the nation of the stipulations of a treaty equally binding upon all parties, and in view of which the United States would be clearly warranted in declining to conform to the treaty stipulations binding on the government until the Chickasaws shall have assumed an attitude of good faith in this matter, and proceed to comply with the terms of the treaty. Such a course would be analogous to that provided by section 2080, above named, and may, it appears to me, be wisely pursued. It is clear that unless the department enforces its decisions by adequate measures, they have no other force or effect than mere opinions upon the matters involved.

With a view, therefore, to the enforcement of the decision of the 27th of August last, and for the purpose of compelling the Chickasaw authorities to conform to the terms of the treaty of 1866 in the repeal of the permit laws, I have the honor to recommend that the authorities of the Chickasaw Nation be informed that they will be expected at the next session of their legislature to repeal the said permit law, and that no further payments of annuity or other moneys arising under any treaty with them will be made until all measures looking to the enforcement of the same against either whites or Indians shall have been abandoned by the authorities, and the fact officially promulgated by the governor of the nation. This course has on several occasions been pursued to compel a compliance with treaty stipulations and the requirements of the department in matters pertaining to the tribal affairs of the Indians.

The most notable instance of this character arose out of the dissensions existing in the Cherokee Nation growing out of the treaty of 1835–'36 and the removal of the Ross party to the Cherokee country in Indian Territory. For the purpose of healing these difficulties, which were bitter and continued, the Commissioner of Indian Affairs, under instructions from the Secretary of War, by order dated November 9, 1839, directed Capt. William Armstrong, agent for said tribe, to make no further payment to the Cherokees until their difficulties were settled, and which order he was directed to communicate to the Indians immediately. This order remained in force until November 11, 1840, when, the difficulties in the nation having been composed, it was withdrawn by order of the Secretary of War.

I have also to suggest the propriety of extending the order in accordance with the request contained in the above-named letters, so as to require the treasurer of the Chickasaw Nation to refund the tax heretofore improperly collected.

I inclose herewith the following papers, to wit:

1st. Agent Marston's letter, dated October 8, 1877, with one inclosure.

2d. Agent Marston's letter, dated October 8, 1877, with one inclosure.

3d. Letter of B. F. Colbert, dated November 2, 1877.

4th. Agent Marston's letter, dated November 8, 1877, with ten inclosures.

5th. Letter of Coleman Cole, chief Choctaws, dated January 30, 1878; and

6th. Letter of Lem. Reynolds, dated January 30, 1878, with 12 inclosures, all of which I respectfully request to have returned with your instructions in the matter.

Very respectfully, your obedient servant,

C. W. HOLCOMB,
Acting Commissione

The honorable the SECRETARY OF THE INTERIOR.

EXHIBIT No. 9.

UNION AGENCY, INDIAN TERRITORY,
Muscogee, December 30, 1876.

SIR: I would most respectfully ask, for the benefit of this office—

1. What penalty can the authorities of any tribe in this agency inflict upon a post-master, United States citizen, who refuses to pay a tax to the revenue collector of the tribe for selling writing-paper, pens, pencils, newspapers, postage-stamps, &c., in his own post-office building? Is such a one under any treaty obligations to pay a tax to the tribe in which the post-office is located?

2. Is it, or is it not, a violation of the treaty with the Choctaws and Chickasaws for them to charge a revenue or collect a tax of two per cent. on the invoice price of all goods brought into their country by licensed traders, or to charge stock-buyers one per cent. on the amount of capital they use in the purchase of every shipment of cattle they make?

These questions are presented to this office, and I have deferred giving a decision until I receive department instructions.

3. Can any tribal authorities assess and collect a tax of a United States citizen, whether he be a merchant, mechanic, school-teacher, or farmer, unless such an assessment be approved by the United States Indian agent of said tribe?

An early reply to the above questions will be of service to this office.

Very respectfully,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 10.

UNION AGENCY, INDIAN TERRITORY,
Muscogee, January 3, 1877.

SIR: I would most respectfully ask, for the benefit of this office, if the "permit law" of the Chickasaw tribe, as passed at the late session of their council, a copy of which is herewith inclosed, has received the approval of the President of the United States or of the Interior Department.

Complaints are being reported at this office against the laws, and I have expressed the opinion that it is in violation of treaty stipulations unless properly indorsed by the United States authorities. Am I sustained in this opinion?

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner Indian Affairs, Washington, D. C.

EXHIBIT No. 11.

EXECUTIVE OFFICE, CHOCTAW NATION,
January 31, 1877.

SIR: Inclosed find a transcript of an official letter of S. W. Marston, United States Indian agent, to certain citizens of the Chickasaw Nation named therein, to which I beg leave to call your attention. This decision is of course as applicable to the Choctaws as the Chickasaws, and to which I desire to enter my solemn and official protest for the following reasons, to wit:

1st. The above-named agent has transcended his authority.

2d. The spirit and enforcement of such a decision is in direct conflict with the rights, laws, and privileges of the Choctaws and Chickasaws as guaranteed in the seventh article of the treaty of 1866.

3d. The treaty of 1855 has no article 39. If the above-named agent made a mistake and intended to refer to the treaty of 1866, article 39, his decision fails of its application, for the reason that it has no reference to any class of persons but licensed traders, and if the agent had been informed, he would have known that that article was very materially altered by the amendment thereto. These Chickasaw petitioners represent a turbulent and minority element in their tribe with sinister motives, and represent their case falsely and unduly, and their reference to the treaty of 1866, article 43, is certainly no support to them or the

agent. The last-named article does not contemplate individual citizens of the Choctaw or Chickasaw Nation, it only refers to the nations as nations, legally organized communities, and gives no rights or powers to individual citizens of either tribe or nation.

The seventh article of the treaty of 1855 is plain, and gives the Choctaws and Chickasaws all the authority they need to enforce their laws if the United States agent will do his duty. In the latter part of this article where reference is made to "the assent of the United States agent is authorized to withhold or revoke his assent to the residing of unsuitable persons in the Indian country," even if such persons may have obtained the permission of the Choctaws or Chickasaws to reside among them. This is the first instance of my knowledge in which the United States Government has been so belittled by one of the Indian agents in intermeddling with the revenue laws of Indians.

The United States Government through her noble powers tells, and instructs, and advises us to educate and advance, but our Indian agent falsifies his government, and says to us, United States citizens among you can't pay you any taxes without his (my) consent; for which he has not a word of authority.

I ask you to remove this agent at once and appoint one who will represent the United States Government properly and encourage us to keep up with the age; and not encourage lawless persons with the idea that they may come here and evade the usual laws and customs of all governments.

Hoping to have your early attention to this matter and a favorable consideration, I have the honor to be,

Very respectfully, your obedient servant,

COLEMAN COLE,
Principal Chief Choctaw Nation.

To His Excellency U. S. GRANT,
President of the United States.

DEXTER, TEX., *January* 30, 1877.

Hon. S. W. MARSTON,
United States Indian Agent:

I want your instructions as to how I can bring in men in the nation under the forty-third article of the treaty of 1866, between the United States and the Choctaws and Chickasaws, so as to not be intruders, at your earliest convenience.

Yours, with high regards,

R. H. L[illegible].

I do not know.

S. W. MARSTON,
United States Indian Agent.

True copy as printed.

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION AGENCY,
Muscogee, Ind. T., January 18, 1877.

SIRS: In reply to your petition, I would respectfully inform you that the said law above referred to has never been submitted to this office for its approval as required by the treaty stipulations (see treaty 1855, article 39), and hence it is null and void. Furthermore, there is no law of any treaty allowing any Indian authorities to levy a tax upon the labor of United States citizens.

Very respectfully,

S. W. MARSTON,
United States Indian Agent.

To P. R. GOLDSBY, B. F. COLBERT, AND OTHERS,
Petitioners to the United States Indian Agent of Union Agency for relief from the burden of a tax of $25 *imposed upon "white persons skilled in agriculture" (see treaty* 1866, *article* 43) *by the Chickasaw Legislature, and approved by the Principal Chief October* 17, 1876.

True copy of the certified copy.

CHICKASAW PERMIT LAW.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That citizens of any State or Territory of the United States wishing to live or rent land, or be otherwise employed in the nation, shall be required to enter into a contract with a citizen, said contract to be reported by the citizen to the county clerk of the county where said citizen resides.

SEC. 2. *Be it further enacted*, That citizens who shall employ any non-citizen shall supply, within fifteen days after entering into contract, to the clerk of the county where non-citizen wishes to reside, for a permit for every male non-citizen over the age of eighteen years in his employ, and for each permit so obtained the non-citizen shall pay to the clerk issuing

the same the sum of twenty-five dollars, and the clerk shall retain for each permit issued twenty-five cents for his services, and shall report to the auditor and treasurer quarterly of all money received by him for permits, and, after deducting out his fee, shall pay the balance over to the treasurer for national purposes.

SEC. 3. *Be it further enacted*, That every foreigner who shall come into this nation for the purpose of farming or being otherwise employed, without the proper authority of the United States Government, shall be deemed an intruder by virtue of sction 2134 of the Revised Statutes of intercourse law.

SEC. 4. *Be it further enacted*, That all licensed merchants and traders, non-citizens, shall, in addition to the tax paid on goods, be required to procure from the county clerk of the county in which they shall each pay twenty-five dollars, conditioned upon the faithful observance of the laws of this nation, and the clerk shall dispose of the funds in the manner prescribed in section 2 of this act.

SEC. 5. *Be it further enacted*, That no permit shall be granted for a longer time than twelve months, and in case of any violation of any law of this nation, the offender shall be ordered out of the Chickasaw Nation, and any citizen who shall employ a non-citizen for more than fifteen days without procuring a permit for the same, and shall be deemed guilty of misdemeanor, and be subjected to a fine of twenty-five dollars before the county court having jurisdiction, and all fines collected under this act shall go to the county treasurer for county purposes.

SEC. 6. *Be it further enacted*, That any non-citizen having entered into a contract with any citizen of this nation, and obtain a permit under his employ, and shall leave the employ of said citizen without his knowledge and consent, shall forfeit his permit, and no other permit shall be granted any non-citizen forfeiting the same by either clerk or either county of this nation.

SEC. 7. *Be it further enacted*, That any person living in this nation under permit shall not be allowed to bring into or hold more than five milch cows, and shall have no hogs outside of enclosure, but shall be allowed all the work horses, mules, and cattle as may be necessary to work said farm, and shall be allowed to feed surplus crop to beef cattle under fence.

SEC. 8. *Be it further enacted*, That all freedmen not owned by Chickasaws or Choctaws at the date of the treaty of Fort Smith shall be required by the sheriff of the respective counties of this nation to procure permits as provided in this act.

SEC. 9. *Be it further enacted*, That all acts and parts of acts in conflict with this act are hereby repealed, and this act take effect and be in force from and after its passage.

Approved, October 17, 1876.

Please answer at your earliest convenience.

Yours, with high regards,

R. H. LOVE.

I am a Chickasaw and I want legal instructions how I can bring into the nation teachers, mechanics, and agriculturists, without being intruders; and who must I report to. I have employed the following names, white men and families:

J. P. CUSHMAN.
WM. DATY.
WM. SPEARS.
J. RIDDLE.
J. M. SHARROCK.
J. B. BRAWLY.
B. ELLISON.
P. STRICKLIN.
S. DRAKE.
WM. YOUNG.
J. BERRY.
B. HATHMAN.
A. G. MITCHELL.
B. L. APPLEWHITE.
H. & B. O'NEAL.
F. KELMS.
J. HANKS.
B. DAVIS.
B. SMITH.
I. BIRD.
S. ANDERSON.
T. SHARROCK.
J. ADDINGTON.
Z. T. ADDINGTON.
J. MOSTILA.
J. NELMS.
W. JENNINGS.
T. JOHNSON.
W. CRASEBOLT.
R. HOLSOMBACK.
B. YOUNG.
L. BOWLES.

OFFICE OF INDIAN AFFAIRS, UNITED STATES UNION AGENCY,
Muskogee, Ind., T., January 18, 1877.

SIRS: In reply to your petition I would respectfully inform you that the said law above referred to has never been submitted to this office for its approval as required by the treaty stipulations (see treaty 1866, article 39), and hence it is null and void. Furthermore, there is no law of any treaty allowing any Indian authorities to levy a tax upon the labor of United States citizens.

Very respectfully,

S. W. MARSTON,
United States Indian Agent.

To P. R. GOLDSBY, B. F. COLBERT, AND OTHERS, *petitioners to the United States Indian agent of Union agency for relief from the burden of a tax of* $25 *imposed upon "white persons skilled in agriculture" (see treaty* 1866, *article* 43) *by the Chickasaw legislature and approved by the principal chief October* 17, 1876.

EXHIBIT NO. 12.

Permit law of Chickasaw tribe.

SECTION 1. *Be it enacted by the Chickasaw Nation*, That citizens of any State or Territory of the United States wishing to live or rent land, or be otherwise employed in this nation, shall be required to enter into contract with a citizen; said contract to be reported by the citizen to the county clerk of the county where said citizen resides.

SEC. 2. *Be it further enacted*, That any citizen who shall employ any non-citizen shall apply within fifteen days after entering into contract to the clerk of the county where said non-citizen wishes to reside for a permit for any male non-citizen over the age of 18 years in his employ; for each permit so obtained the non-citizen shall pay to the clerk issuing the same the sum of twenty-five dollars, and the clerk shall retain for each permit issued twenty-five cents for his services, and shall report to the auditor and treasurer quarterly of all moneys raised by him for permits, and after deducting out his fees shall pay the balance over to the treasurer for national purposes.

SEC. 3. *Be it further enacted*, That every foreigner who shall come into this nation for the purpose of farming or being otherwise employed, without the proper authority of the United States Government, shall be deemed an intruder, by virtue of section 2134 of the Revised Statutes of the United States.

SEC. 4. *Be it further enacted*, That all licensed merchants and traders, non-citizens, shall in addition to the tax paid on goods, be required to procure from the county clerk of the county in which they wish to trade, and all physicians, non-citizens, wishing to practice their profession, shall procure from the county clerk of the county in which they wish to reside, a permit, for which they shall each pay twenty-five dollars, conditioned upon the faithful observance of the law of this nation; and the clerk shall dispose of the funds in the manner prescribed in the second section of this act.

SEC. 5. *Be it further enacted*, That no permit shall be granted for a longer time than twelve months; and in case of violation of any laws of this nation, the offender shall be ordered out of the limits of the Chickasaw Nation; and any citizen who shall employ any non-citizen for a longer time than fifteen days without procuring a permit for the same shall be deemed guilty of a misdemeanor, and be subject to a fine of twenty-five dollars before the county court having jurisdiction; and all fines collected under this act shall go to the county treasury for county purposes.

SEC. 6. *Be it further enacted*, That any non-citizen having entered into contract with any citizen of the nation and obtained a permit under his employ, and shall leave the employ of said citizen without his knowledge and consent, shall forfeit his permit, and no other permit shall be granted any non-citizen forfeiting the same by either clerk of either county of the nation.

SEC. 7. *Be it further enacted*, That any person being in the nation under permit shall not be allowed to bring into or hold more than five head of milch-cows, and shall have no hogs outside of inclosures, but shall be allowed all the work horses, mules, and cattle as may be necessary to work said farm, and shall be allowed to feed surplus crop to beef-cattle under fence.

SEC. 8. *Be it further enacted*, That all freedmen not owned by Chickasaws and Choctaws at the date of the treaty of Fort Smith shall be required by the sheriffs of the counties of this nation to procure permits as provided in this act.

SEC. 9. *Be it further enacted*, That all acts and parts of acts in conflict with this act are hereby repealed, and this act takes effect and be in force from and after its passage.

[Copy.]

OFFICE INDIAN AFFAIRS,
UNITED STATES UNION AGENCY,
Muskogee, Ind. T., February 19, 1877.

SIR: I have the honor to inclose herewith a communication from D. H. Cooper, an adopted citizen of the Chickasaw Nation, with copy of "general permit law of the Chickasaw Nation."

An appeal some days ago was made by citizens of the Chickasaw Nation to this office relative to this law. I felt no hesitation in deciding, and did decide, that Indian nations had no right to impose and collect a tax of citizens of the United States.

As to jurisdiction over their own citizens I had nothing to say, though I doubt the policy or the propriety of taxing labor.

I respectfully refer the matter to you for your consideration, and ask that it be presented

to the Congress of the United States for such action as they may deem best, and at as early a day as practicable. In the mean time I await your instructions.

Very respectfully, your obedient servant,

S W. MARSTON.
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner Indian Affairs, Washington, D. C.

FORT WASHITA, IND. T.,
February 12, 1877.

SIR: Herewith I have to inclose what purports to be an authenticated copy of the "general permit law of the Chickasaw Nation" published in the Star Vindicator of January 13, 1877, and to inquire what remedy will be afforded citizens of the Chickasaw Nation should the courts of said nation impose a fine under the provisions contained in section 5 of said law, for employing a non-citizen of the Chickasaw Nation for a longer period than fifteen days, without such non-citizen having paid the amount required by section 2.

The sheriff of this (Pinola) county a few days ago called and gave notice that the "general permit law of the Chickasaw Nation" would be enforced, and from what I can learn, your decision is disregarded by the authorities in both the Choctaw and Chickasaw Nations.

If it be violation of treaty stipulations to tax citizens of the United States, it would seem equally unlawful to fine Chickasaw citizens for employing them; and we trust you will at once take measures to restrain the Chickasaw authorities from imposing and collecting fines upon Chickasaw citizens for exercising a right secured to them under a treaty with the United States.

Very respectfully, your obedient servant,

D. H. COOPER.

Rev. S. W. MARSTON,
United States Indian Agent, Union Agency, Muscogee, Ind. T.

P. S.—If a case could be presented to the Supreme Court of the United States, having as it has jurisdiction in all cases arising under the treaties with the United States, no doubt an injunction might be obtained restraining the Chickasaw authorities from enforcing their permit law; but I do not see how the question can be brought before the United States court from the Chickasaw courts. But it would seem there ought to be power somewhere to prevent violations in the Indian Territory of rights secured by treaty to the citizens of the Indian nations, as well as to citizens of the United States; and possibly there may be time before the adjournment of Congress for such legislation under article 7 of the treaty of 1866 as will afford the necessary protection. A reply at your earliest convenience will much oblige many citizens of the Chickasaw Nation, whose farming operations are seriously injured by the attempted enforcement of the general permit law, so called, of the Chickasaw Nation.—D. H. C.

EXHIBIT No. 13.

UNITED STATES UNION AGENCY,
Muskogee, Ind. T., January 18, '77.

SIRS: In reply to your petition I would respectfully inform you that the said law above referred to has never been submitted to this office for its approval, as required by the treaty stipulations (see treaty of 1855, article 39), and hence it is null and void. Furthermore, there is no law of any treaty allowing any Indian authorities to levy a tax upon the labor of United States citizens.

I am, gentlemen, very respectfully, yours, &c.,

S. W. MARSTON,
United States Indian Agent.

To P. R. GOLDSBY, B. F. COLBERT, and OTHERS *petitioners to the United States Indian agent of Union agency, for relief from the burden of a tax of* $25 *imposed upon "white persons skilled in agriculture" (see treaty of* 1866, *article* 43) *by the Chickasaw legislature and approved by the principal chief October* 17, 1876.

UNITED STATES UNION AGENCY,
Muscogee, Ind. T., March 30, 1877.

SIR: I am this day in receipt of the information from several sources that the chief of the Chickasaw tribe in this agency is raising or has already raised a military force of "25 men from each county, for the purpose of putting all white men out of the nation who do not take out his $25 permit." In my letter of February 19 you will find a copy of the law passed by the last Chickasaw council, and inclosed is a copy of my opinion in regard to it, called for by a petition from prominent men of the Chickasaw tribe.

If I have committed an error in giving the opinion I did to the petitioners, I would like to be corrected.

It is also reported to this office that Governor Overton, while in Washington, obtained the approval of the $25 tax-law of the Chickasaw council. I would most respectfully ask, for the information of this office, if this was so.

I understand that B. F. Overton was elected chief or governor by the full-blood element of the nation, under the pledge that he would have every white man removed out of the nation, and so when the council met last October the tax on United States citizens for working as farmers for the Chickasaw Indians was raised from 25 cents to $25, as you may see by a copy of the law in my letter of February 19, 1877.

I consider this law unjust to the Indians who depend upon white labor for the cultivation of their farms, and if it be enforced I am afraid there will not be grain enough raised among the people this year for their own sustenance. Thousands upon thousands of acres that now under fence will be left to grow weeds instead of producing corn and cotton, as it would if the Indians could have the privilege of employing white men to work their land for them.

Hoping for information soon on which to base future action,

I am, very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 14

UNITED STATES UNION AGENCY,
Muscogee, Ind. T., April 16, 1877.

SIR: I trust it may not be considered out of place for me to thank you for the charitable construction which you placed upon my erroneous opinion in regard to the tax-law of the Chickasaw Nation in your letter of March 23 to the honorable the Secretary of the Interior. It was truly, as you say, "an erroneous judgment upon a question of law." I refer to the opinion expressed in office letter of January 18, directed to P. R. Goldsby and J. R. Colbert, and others, citizens of the Chickasaw Nation, a transcript of which was sent to the department by Coleman Cole, chief of the Choctaw Nation, in a communication dated January 31, 1877.

I was influenced to entertain the opinion that "there is no law of any treaty allowing any Indian authorities to levy a tax upon the labor of United States citizens" too much, perhaps, by the opinions of others; for instance, the late Secretary of the Interior, the Hon. Z. Chandler, in a communication directed to T. C. Sears, esq., general attorney of the Missouri, Kansas and Texas Railway Company, dated April 13, 1876, says: "Whatever power is possessed by the Choctaw Nation to impose taxes must be derived from some treaty or act of Congress of the United States. The right to impose taxes is not a right which has heretofore been exercised or claimed by the Choctaw Nation, so far as I am advised."

Hon. William H. Clayton, district attorney for the western district of Arkansas, in a case before the court of that district, held last December at Fort Smith, said: "No power on earth save Congress could impose a tax on property of citizens of the United States in the Indian country," and this opinion was sustained by the court, Judge Parker on the bench.

Another consideration which influenced me to render the decision which I did was the temporal welfare of the Chickasaw people. The most of them who are being benefited by their rich soil depend almost entirely upon United States citizens for its cultivation, and I feared that if the latter were compelled to pay a tax of $25 a year instead of 25 cents, as heretofore, they would leave the country rather than do it, and, as the result, much of the improved land would go unoccupied and the resources of the Chickasaw people be greatly diminished.

I write this letter not to justify myself in the opinion expressed to the Chickasaw delegation, but rather to mitigate the error I committed in so doing. I have given due notice to that delegation of my mistake, and have laid before them the opinion of the department on the question raised.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 15.

UNITED STATES UNION AGENCY,
Museogee, Ind. T., April 28, 1877.

SIR: The petition of Chickasaw citizens herewith inclosed reached this office yesterday, and I transmitted it to the department for such action as may be deemed advisable.

I would, however, express the opinion that as the Chickasaw people have the treaty right of self-government, it might be well to let them learn the sad effects of their bad legislation by experience.

I learned by a messenger direct from the Chickasaw Nation yesterday that the chief, B. T. Overton, had desisted from the enforcement of the $25 tax-law, and expressed himself as opposed to it. How true this is I cannot say.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

To the Hon. S. W. MARSTON,
United States Indian Agent:

The petition of the undersigned citizens of Panola County, Chickasaw Nation, would respectfully represent unto the United States Indian agent, and through him to the authorities of the United States, that the legislators of the Chickasaw Nation in September last passed a law requiring all white men, citizens of the United States, renting land of, or being in the employment of citizens of the Chickasaw Nation, to take out a permit in the name of the citizens of the nation, and to pay for the same the sum of $25.

We would respectfully represent to the agent that said law is very oppressive to the people of the nation, as many of the renters, non-citizens of the nation and citizens of the United States, are not able to pay the sum of $25, and the citizens owning the farms are not able to pay the $25 for the renters, and the governor of the nation is enforcing the said laws, to the great injury of the people of the nation as well as to the non-citizens.

We would also represent unto the agent that many of them rented their farms out last fall to citizens of the United States who took out permits in good faith under the old law requiring the payment of 25 cents for the same, the national secretary not having furnished the clerk of the court with a copy of the law of September, 1877; and we would respectfully ask of the United States Indian agent relief from the operation of said laws. We are aware that there is no way of obtaining relief except through the United States authority, and we would respectfully ask of the agent to take the necessary steps through the United States authority to cause the governor of the Chickasaw Nation to convene the legislature of the Chickasaw Nation, so that said law may be repealed.

We would call your attention to the treaty of 1866, allowing the employment of white men by the citizens of the nation; also to that clause of the treaty protecting the people from domestic violence, and also that clause of the treaty authorizing the Secretary of the Interior to have the council of legislation of the Choctaw and Chickasaw convene for the relief of the people; all of which is respectfully submitted.

LEM REYNOLDS.	WASH FINCH.
T. S. BARKER.	S. H. REYNOLDS.
J. R. MAUPIN.	W. H. BACON.
J. J. CRAVENS.	J. A. REYNOLDS.
BENJ. KENY.	J. C. MCCOY.
J. H. MASHBURN.	H. F. MURRAY.
CHARLEY EASTMAN.	JOHN LEWIS.
J. M. WEBB.	J. M. FRANKLIN.
D. W. COLBERT.	JASON SHOPAE.
CHAS. SHEA.	

EXHIBIT No. 16.

PAUL'S VALLEY P. O., CHICKASAW NATION, IND. T.,
May 21, 1877.

SIR: I have the honor to acknowledge receipt of your letter of 16th instant inclosing "copies of certain letters from citizens of the United States, in this nation, and inviting my attention to same, requesting me to report the facts concerning the alleged hardships inci-

dent to the collection of the $25-tax imposed by my nation upon white persons not citizens thereof." In reply I have to state as follows :

I have only removed from the nation those who were not employed by citizens and who were considered, by respectable farmers and citizens, intruders. They either refused to pay the $25-tax or said they could not do so. The only neighborhood where the tax was not cheerfully paid was that of Mr. R. H. Love, a citizen of the Chickasaw Nation, whose statement that the "removal of the intruders will cause a great deal of suffering" is entirely imaginary and for malicious effect.

Referring to statement of Rev. W. G. Davis, have to say that he is a farmer, and is now cultivating a farm ; that the Rev. N. E. Parsons is the traveling minister for the Paul's Valley circuit. There are several gentlemen besides Mr. Davis who claim to be local preachers and missionaries, but who have cheerfully paid for their permits. Mr. Davis has also paid for his permit.

Upon the petition of citizens, I removed one D. R. Grabill, who occupied a small cabin *belonging* to a citizen, built by railroad laborers, and which had been abandoned by them. It was represented to me by the citizens that Grabill was a bad man and gave them much trouble. I offered Grabill transportation for his personal effects, which he refused, saying he would not remove them from the cabin, as he intended to return. I had them removed, attending to it personally. Nothing belonging to Grabill was taken or burned by my militia, and the value of his goods and chattels removed from the cabin did not exceed $50. He, Grabill, is most worthless, and his statement is false.

You will doubtless receive and see from the newspapers exaggerated reports of my action in collecting the permit tax. I assure you that nothing has been done not warranted by the law which I have endeavored to execute.

I would respectfully refer you to Capt. H. H. Crews, Fourth United States Cavalry, Fort Sill, Indian Territory, who accompanied me for three weeks, as to the above.

On my return to Tishomingo I will make a full and complete report to your office.

Very respectfully, yours,

B. T. OVERTON,
Governor.

Hon. S. A. GALPIN, *Acting Commissioner of Indian Affairs, Washington, D. C.*

EXHIBIT No. 17.

SKULLYVILLE COUNTY, CHOCTAW NATION, IND. T.,
June 13, 1877.

SIR : I write for information to know whether the communications between you and the principal chief of the Choctaw Nation in reference to the Choctaw permit law is true or not, and whether the Choctaw government has a right to tax the non-citizens of their nation or not. If they do we want to know it, for we don't want to pay a tax if they have no right to tax us.

Yours, respectfully.

Please address to

W. E. MARTIN,
James Fork P. O., Sebastian County, Arkansas.

The honorable COMMISSIONER OF INDIAN AFFAIRS.

EXHIBIT No. 18.

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION AGENCY,
Muskogee, Indian Territory, June 18, 1877.

SIR: I would most respectfully submit the inclosed note from Dr. T. F. Ealy, our teacher of freedmen at Fort Arbuckle, concerning the demand of Governor Overton, of the Cickasaw Nation, of this office for $25, as an annual tax levied by Chickasaw council upon United States citizens.

Shall I pay the tax for Dr. Ealy, who is an employé of the United States, or must he pay it himself, or is he exempt from taxation, according to the seventh article of the treaty of 1855 and article 43 of treaty of 1866.

This office asks for instruction as to the questions raised.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

FORT ARBUCKLE, INDIAN TERRITORY, *6th, 2d*, 1877.

DEAR SIR: Governor Overton called this week and said, "Tell the agent I demand $25 of him for you." He said we have something to say in deciding where men shall locate.

If there is anything to come out of my pocket in this matter, write to me at once, and I will stop the school and leave the nation immediately. I get nothing for preaching. They rather owe me $2,500 than that I should pay $25 to remain. Please tell me. It's hard work in this corner.

Yours, truly and respectfully,

T. F. EALY.

Dr. MARSTON,
United States Indian Agent.

EXHIBIT 19.

DEXTER, COOKE COUNTY, TEXAS,
July 14, 1877.

SIR: On Sunday, June 24, 1877, B. F. Overton, governor of the Chickasaw Nation, in company of Nat Smith, came to the residence of Wyatt Windham, in Pickens County, and told him he was going to put me out of the nation. I told him I did not think he had the power, I had done no wrong; whereupon he said he would d—d soon show me, and told Smith to get him his gun. Smith said, "You have your pistol, and that is enough for Robert." I told him it was Sunday, that I had no way of reaching this place (distant 12 miles); he said he did not care, compelled me, gun in hand, coming into my room gun in hand. The consequence was I was compelled to submit, and was marched down to Bad River, leaving me 10 miles to walk through the burning sun and hot sand to this place; he then said I might come for my trunk. He says he was authorized from your department to put out any man he thinks fit. This is disputed here; they say the agent at Muskogee alone has the power to do so, and I have been advised by a Senator from the State to write to you explaining the circumstances.

My character will bear the strictest investigation. I came South with General Butler in 1862, and served to the close of the war under all the commanders of the Army.

Waiting your reply, I have the honor to be, your obedient servant,

W. C. ROBERT.

The honorable COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

EXHIBIT No. 20.

FORT SMITH, *July* 29, 1877.

DEAR SIR: A few weeks since I forwarded to you, through Rev. Mr. Marston, Indian agent at Muskogee, a statement and petition from the white families, non-citizens, residing in Skully County, Choctaw Nation, who are renters and are taxed $17 a head, irrespective of property; they complain that this taxation is illegal and unjust and oppressive, and as they are threatened with immediate expulsion at a time when they had no money, and their crops have been "laid by," but are not yet matured, they ask some protection from you, in order that justice may be done, and that they are not robbed of their year's labor and forced to leave.

Hoping to hear from you at your earliest convenience on this matter,

I remain, sir, most respectfully, your obedient servant,

H. A. ROGERS,
Attorney at Law, Fort Smith, Arkansas.

Hon. CARL SCHURZ.

P. S.—If you have not received the petition, please take no steps to put petitioners out until Mr. Marston forwards it, as I can send a copy. The petitioners are ordered to remove in ten days, or the soldiers will eject them.

Yours, respectfully,

H. A. ROGERS.

EXHIBIT No. 21.

FORT SMITH, ARKANSAS, *August* 3, 1877.

DEAR SIR: I wish to call your attention to an order from Thomas J. Walls, sheriff of Skully County, Choctaw Nation, commanding all white men, non-citizens, to leave the

Choctaw Nation in ten days or pay him seventeen dollars. This tax is inordinate; it is also unjust and illegal, as it makes no distinction as to persons or amount of property taxed, and is contrary to treaty provisions. Please let no steps be taken by the military to eject our citizens until they can be heard, or at least until they can gather their crops.

Please answer by return mail, and let me know if petition and statement have reached you through Hon. W. H. Marston, and give us a respite.

H. A. ROGERS,
Attorney for Petitioners.

Hon. CARL SCHURZ,
Secretary of the Interior.

To the non-citizens of Skullyville County, Choctaw Nation, that has not complied with the Choctaw permit law, is hereby notified to fix up and move out of the limits of the Choctaw Nation within ten days, and forever remain out; and in case you do not move on your own accord, you will be put out by the military. My authority for this is good.

Given under my hand and private seal this the 28th day of July, 1877.

[SEAL.]

THOMAS J. WALL,
Principal Sheriff of Skullyville County, C. N.

FORT SMITH, ARKANSAS, *4th of 7th*, '77.

DEAR SIR: Please stop this man, Thomas J. Wall, from proceeding further. He is acting the fool, and stirring up bloodshed and trouble, I fear. Please drop a note to Hon. B. W. Marston, at Muskogee, and tell him to go slow.

Your obedient servant,

H. A. ROGERS.

Hon. CARL SCHURZ.

EXHIBIT No. 22.

UNITED STATES UNION AGENCY,
Muskogee, Indian Territory, August 7, 1877.

SIR: Herewith inclosed I have the honor to transmit, by request of H. A. Rogers, esq., of Fort Smith, Ark., a statement of facts as represented to exist in Skullyville County, Choctaw Nation, in regard to United States citizens (see Exhibit No. 1); also a copy of a notice said to have been served on the non-citizens of Skullyville County (No. 2); also a copy of a letter addressed to this office in relation to the same matter (No. 3) by Governor Cole, of the Choctaw Nation.

It is clearly evident to my mind that Chief Cole would like the same privilege that was granted a few months ago to Governor Overton, of the Chickasaw Nation, namely, that of using United States soldiers with his light-horse in removing all persons, both black and white, from the Choctaw country who will not pay the tax enjoined by the permit law.

I would most respectfully ask, therefore, if Governor Cole can have the aid of the United States soldiers to remove from the Choctaw Nation such persons as he considers to be intruders? I ask for the governor's benefit, but at the same time I would in all sincerity, as I believe for the good of the Choctaw people, express the hope that no such aid be placed in the hands of Governor Cole.

The colored people, former slaves of the Choctaw people, do doubtless need protection in such rights as they are entitled to, and I would be glad if the Choctaw authorities could have their rights clearly defined.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

FORT SMITH, *July* 1, 1877.

DEAR SIR: We, the undersigned citizens of the United States residing in Skully County, Choctaw Nation, respectfully beg leave to call your attention, through our agent, Hon. S. W. Marston, at Muskogee, Ind. T., to the following state of facts:

1st. We are all farmers and have rented or leased land in the said county of Skully, Choctaw Nation, for four to five years or more.

2d. Many of us have paid our rent in money; some are cropping on the shares, and some have taken places in the woods and cleared as much as seventy acres of land, and erected houses, stables, and fences. with the full understanding that we were to occupy the premises until paid for in rent at a reasonable rate.

3d. That none of our leases have yet expired, and our crops are growing and not ready to be gathered—oats, corn, and cotton; and therefore all of us, being men in moderate circumstances, find ourselves almost entirely without money at this season of the year.

4th. We state that a tax of $17.50 has been levied or assessed by the council of the Choctaw Nation against all heads of families of whites living in their country.

5th. That said tax is now being collected, and the collection thereof is being enforced against us, and if we do not pay it on demand expulsion and confiscation are threatened against us by one Thomas Walls, who claims to be the sheriff of Skully County (which we deny, as we claim he has never given bonds or received authority from Hon. Nathaniel C. Newles, judge of the county court of Skully County aforesaid, to collect any tax as required by law), although some three or four of us have paid $14.50 in order to avoid trouble.

6th. We claim that said tax is unreasonable and exorbitant, as it does not tax a man according to his property, but according to his marital relations, which we deem unheard of and unconstitutional, as they tax neither privilege, property, or occupation.

7th. We are not able to pay this tax, and are injured by it, as no one will work for or with us while it remains discretionary with the said council to tax us any amount from $1 to $1,000 and upward without limit. Nor can we dispose of our leases or have our cotton picked unless we can get from our government some assurance that we will be protected from the inordinate and blind avarice of those Choctaw law-makers.

8th. Wherefore we pray that such steps may be taken by your honor as will bring about this end and cause the said Thomas Wall to stop said collections and repay the money which he has collected from us; and we will ever pray, as in duty bound.

W. B. NOLEN.	S. H. HICKMAN.
A. J. ALLEN.	JOHN KETCHUM.
THOS. MARTINDALE.	H. N. GREEN.
H. H. TALLEY.	S. HALGER.
J. P. KETCHUM.	J. J. JONES.
T. J. COWARD.	C. C. PAYNE.
E. MCDONALD.	T. J. ACTHERLY.
G. R. MOORE.	GEROME ACTHERLY.
HENRY CHORISTER.	JOHN HAMES.
WILLIAM MOORE.	W. B. MASSE.

Hon. CARL SCHURZ,
Secretary of the Interior.

STATE OF ARKANSAS,
County of Sebastian:

Personally appeared before the undersigned authority, A. J. Allen and Henry Chorister, two of the above-named petitioners, who, being by me duly sworn, state that these facts set forth in the foregoing petition are true, and that they are personally acquainted with all of the parties whose names are signed thereto, and that they had full authority to sign them, and that they all live near Page's Ferry, Skully County, Choctaw Nation, and are farmers.

A. J. ALLEN.
HENRY CHORISTER.

Sworn to and subscribed before me this July 1, A. D. 1877.

STEPHEN WHEELER,
Clerk United States District Court, Western District Arkansas.

Please direct your answer to our attorney, H. A. Rogers, Fort Smith, Ark., and oblige,
Your obedient servants,

A. J. ALLEN.
HENRY CHORISTER.

Hon. S. W. MARSTON:

DEAR SIR: Please forward this to the department. I have submitted it to Hon. J. N. Parkers, judge, and by answering you will oblige,
Your obedient servant,

H. A. ROGERS.

NOTICE.

To the non-citizens of Skullyville County, Choctaw Nation, that has not complied with the Choctaw permit law, is hereby notified to fix up and move out of the limits of the Choctaw Nation within ten days, and forever remain out; and in case you do not move on your own accord, you will be moved out by military force. My authority for this is good.

Given under my hand and private seal this the 28th of July, A. D. 1877.

THOS. J. WALL,
Principal Sheriff of Skullyville County, Choctaw Nation.

CHOCTAW NATION, EXECUTIVE DEPARTMENT,
Atoka, July 16, *A. D.* 1877.

DEAR SIR: In reply to yours of the 2d day of July, 1877, in regard to 111 white intruders in Skullyville County, C. N., to which they have ask it heretofore for their immediate removal. Now, you want me to try the civil officers of this nation if they will go out willingly. Now, if they should resist, and try to fight the officers of this nation, like A. G. Flinchman and his family, Leonard Asher and his family, Ben Betts and his family, Joseph Parker, Chalam and three others, their names not known—now, in case of this kind or such struggle, will you help me with your military force? Please let me know at once, if you will do it. So you will oblige your most friend, &c. I am in duty bound, ever pray.

I have the honor to be, your humble servant,

COLEMAN COLE,
Principal Chief Choctaw Nation.

Maj. S. W. MARSTON,
United States Agent, Indian Territory.

EXHIBIT No. 23.

CHOCTAW NATION, EXECUTIVE DEPARTMENT,
Atoka, September 24, 1877.

SIR: I am in receipt, through S. W. Marston, United States Indian agent, of a copy of your communication to him of the 3d instant, referring to a decision of the Secretary of the Interior of the 27th ultimo, upon the validity of the permit law of the Chickasaw Nation, which Governor Overton attempted to enforce upon one T. F. Ealy, teacher of the freedman school at Fort Arbuckle, to the amount of $25.

It is strange that so exalted an officer of the United States Government as the honorable Secretary of the Interior should commit the government to a decision on April 2, and then upon the 27th of August of the same year decide the reverse.

There is a manifestation of rashness, hastiness, and instability entirely foreign to the character of the honorable Secretary, and very unusually characteristic of any high public functionary. The facilities and sources of information for the honorable Secretary were as good in April as in August.

I propose to make no objections as to the particular case of Dr. T. F. Ealy, but when the honorable Secretary is induced to make the sweeping declaration that neither the Choctaws nor Chickasaws have any authority to pass or to enforce a law upon the subject of taxation except under the provisions of article 47 of the treaty of April 28, 1866, &c., my official capacity and my manly consciousness alike demand that I take issue with him.

The honorable Secretary could not have examined that forty-seventh article with much care or thought, or he would have seen that contingency none the less uncertain, yet that treacherous proviso, and that condition yet unfulfilled. He would have seen that the only thing which can give it even a name is the survey and assignment of the Choctaws and Chickasaws and other Indians' and negroes' lands in severalty.

The honorable Secretary ought to know this has not been accomplished. The Secretary should be informed that no application has been made by the respective legislative council of the Choctaw and Chickasaw for their invested fund and trust funds in the hands of the United States Government, to be capitalized or converted into money, that these funds have not been converted into money, and consequently no division and payments made *per capita* to the individuals thereof respectively.

Without the fulfillment of the first part of that forty-seventh article the proviso is no more value than the same amount of blank paper.

The honorable Secretary may as well know that not only the forty-seventh article, but many other articles of the treaty of 1866, possess no force under the present holding of Choctaw and Chickasaw lands in common.

Articles 3 and 11, and many other articles and parts of articles of the same treaty, have conditions introduced into them which destroy their force entirely. But, for the sake of argument, let us assume that the proviso of that forty-seventh article is law and treaty; when the taxation is introduced it must have an object; now, what is that object in the forty-seventh article? An individual of dull perception cannot fail to see that it is the lands of Choctaw and Chickasaw country, and that no other kind of taxation is even implied. Why restrict Choctaws and Chickasaws, says you, to the satisfaction of the President of the United States in the matter of taxation upon lands in their own country, evidently for the protection of the negroes and Kansas Indians, whose tenure of lands is presupposed in the proviso. Land office was to be established in the Choctaw territory, at Boggy Depot, to give Indians and negroes land and patent to stay on it and cultivate the soil for twenty-one years before they could get their fee-simple title to their lands.

The honorable Secretary will follow us to article 10 of the treaty of 1866; we will find an article that will do to rest on, and one which points us back to the previous treaties; and we have to go no further back than article 7 of the treaty 1855, where we find no treacherous proviso to stumble over; where we find out what an intruder is and what is to be done with him; where we find that the duties of all parties concerned, or all who may become concerned, are marked out in plain and unmistakable language.

The honorable Secretary's construction of the forty-third article of the treaty of 1866 makes it impossible to tell who is an intruder. The latter part of this forty-third article reads as follows: "But this article is not to be construed * * * to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of said nations." The question arises here, What are the works of internal improvement? Are not the employment of skilled laborers, agricultural and mechanical, the building up of school, the opening up of farm, the operating of the mines, &c., all works of internal improvement? No one will say to the contrary, and yet the honorable Secretary would dictate a limitation to our rights.

From the further fact that the word "temporarily" is thrown in between the employment of white persons who are teachers, mechanics, or skilled in agriculture, shows that there was some limitation intended upon their indiscriminate and permanent employment.

The Choctaws and Chickasaws both have had permit laws for many years, and with the knowledge and assent of the different United States Indian agents. Another potent reason why the honorable Secretary's rendering of that forty-third article will not do, is that it makes distinction among persons on account of color, in direct variance with the spirit of the fourteenth amendment to the Constitution of the United States. Our rendering shows that this distinction of color was made in deference to the rights and wishes of the Choctaws and Chickasaws; to their rights, because they were allowed to exercise choice as to whom they would permit to come in among them, and to their wishes, because it was well known that they desired to get rid of the negroes who were already among them.

No good citizen will object to contributing his equitable share of support to the government of the country in which he lives. The vicious, lazy, improvident, and otherwise unworthy, labor most to elude this duty of contribution to government, and yet these are the classes whom the honorable Secretary has publicly invited to come and live among us; above all men, those whom we do not want.

We cannot believe the honorable Secretary is properly represented in the decision of August 27, and we beg of you, sir, to press this matter upon the honorable Secretary again, and get back to your generous, candid, and gracious decision of March last. I have the honor to be,

Your humble servant,

COLEMAN COLE,
Principal Chief Choctaw Nation.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

P. S.—I am pressed in my mind, and like to hear from you very soon, if possible.

C. COLE,
Principal Chief Choctaw Nation.

EXHIBIT NO. 24.

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION INDIAN AGENCY,
Muscogee, Ind. T., October 8, 1877.

SIR: I have the honor to refer, most respectfully, to the department the inclosure from Mr. J. D. Harris, a prominent Chickasaw Indian, who was president of the national senate in 1867, and for many years treasurer of the nation, for your information, and to ask instruction:

1. Have not Chickasaw Indians the right to employ persons "skilled in agriculture" without a permit from their own or the United States authorities?
2. Has the United States agent a right to grant permits to such persons, irrespective of the authorities of the Chickasaw Nation?

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Agent.

Hon. E. HAYT,
Commissioner of Indian Affairs, Washington, D. C.

POST-OAK GROVE POST-OFFICE,
Chickasaw Nation, October 4, 1877.

SIR: I would most respectfully represent that B. F. Overton, governor of the Chickasaw Nation, says he won't recognize the late order of the Secretary of the Interior, declaring the late permit-law taxing white labor $25 each, and in an informal speech (outside of legislative hours) that he wanted no change in the "permit-law," and that if the people would back him with means and their influence he would still collect the $25 permit-tax; further states that the governor never laid the decision of the Secretary of the Interior before the legislature for their action.

Therefore, in absence of law, appeal to you as United States Indian agent for protection, and ask for three permits: one for E. M. Powers, J. C. Forney, and David Crittendon, all white men and citizens of the United States, as farmers in my employ. I have had them in my employ for the past three years, and they are honest, peaceable, and law-abiding men, and suitable persons to remain in the nation.

I would further state that I am a cripple, not able to work, and my only support for myself and family is from my farm.

If there is any protection under the treaty, for me, as a citizen of the Chickasaw Nation, from the United States, protecting me in my rights won't it? If none, I want to know it, and respectfully ask you, as United States agent, for information.

Very respectfully,

J. D. HARRIS.

S. W. MARSTON,
United States Indian Agent, Muscogee, C. N.

EXHIBIT 25.

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION INDIAN AGENCY,
Muscogee, Ind. T., October 8, 1877.

SIR: I am requested by Wm. C. Edwards, a renter in the Chickasaw Nation, to forward to the Hon. the Secretary of the Interior the inclosed communication, relative to the refunding to him by the Chickasaw Nation the $25-tax which was collected of him under the so-called permit-law.

There seems to be a general inquiry among those who have been forced to pay this tax, to know if they are to be reimbursed or not, and I am of the opinion that such information would, just at the present time, be of value to all parties interested.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Agent.

Hon. E. A. HAYT,
Commissioner of Indian Affairs, Washington, D. C.

BOGGY DEPOT, C. N., *October* 4, 1877.

DEAR SIR: I am a citizen of the United States, and at present farming in the Chickasaw Nation. In addition to the rent I pay to Chickasaw Indian to farm his land, which is one-third of the corn I raise, and one-fourth of the cotton, I was required to pay a tax or permit to the nation of $25. I understand that you have decided that tax illegal. Please let me know if I can get the money, $25, back from the nation, or whether the nation will be expected to refund it or not.

Very respectfully, your obedient servant,

WM. C. EDWARDS.

Hon. CARL SCHURZ,
Secretary of the Interior.

(*Through Dr. S. W. Marston, United States Indian Agent,*
and Hon. J. Q. Smith, Commissioner of Indian Affairs.)

EXHIBIT No. 26.

COLBERT STATION, IND. T., *November* 2, 1877.

HONORABLE SIR: I own and operate a ferry on Red River, on the main thoroughfare between the Northwestern States and Texas, for which I have a charter from the State of Texas and the Chickasaw Nation. I am a citizen of the Chickasaw Nation by blood. I desire to know if the authorities of the Chickasaw Nation are competent to enact a law requiring me to pay a permit-fee for hands necessary to operate said ferry? Last spring it was necessary for me to become surety for my ferryman to prevent him from being removed for want of a $25 permit. Governor Overton says he will enforce the law; I am willing to pay it if right.

There appeared in the papers in September last what purported to be an opinion from the Interior Department, setting aside the permit law of the Chickasaw legislature; hence I desire to know whether I have it to pay for ferryman. For character and standing I respectfully refer you to Hon. Messrs. Maxey and Throckmorton of Texas. I hope you will condescend to notice this, though it may be somewhat out of the usual mode of transacting business with you.

Hoping to hear from you at your earliest convenience, I remain, your obedient servant,

B. F. COLBERT.

Hon. CARL SCHURZ,
Secretary of the Interior, Washington, D. C.

EXHIBIT No. 27.

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION AGENCY,
Muscogee, Ind. T., November 8, 1877.

SIR: I herewith respectfully transmit a petition or memorial from certain individuals in the Chickasaw Nation, said to be numbered among the most prominent and influential members of the tribe.

I also submit with it the communication transmitting the same to this office, with several letters which have been received of late from various persons in the Chickasaw Nation relative to the so-called "permit-law" of the Chickasaw authorities.

These several papers seem to indicate that Hon. B. F. Overton, the Chickasaw governor, does not recognize the authority of the United States Government as set forth in a communication of the Hon. the Secretary of the Interior to the Hon. Commissioner of Indian Affairs, dated August 27, 1877, a copy of which, with the instructions of the Hon. Commissioner of Indian Affairs, as set forth in department letter of September 3, 1877, was furnished to Governor Overton from this office September 18, 1877.

I am informed, upon what I consider good authority, that Governor Overton is going to Washington with his delegation, among other things to bring *influences* to bear upon the Commissioner and Secretary to enable him to go on and enforce the so-called permit-law of the Chickasaws; and failing in that, to re-assemble the legislature on his return and recommend the passage of a bill to enforce a fine of $100 (instead of the $25, the present law) on all Chickasaw citizens who employ United States citizens without paying the tax.

The governor, I understand, will start for Washington in a few days, and when he arrives will doubtless be able to explain the whole matter better than I could possibly do by writing.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Agent.

Hon. E. A. HAYT,
Commissioner of Indian Affairs, Washington, D. C.

TISHOMINGO CITY, *October* 29, 1877.

To S. W. MARSTON,
United States Indian Agent, Muskogee, C. N.:

Inclosed find a memorial to the President of the United States, which you will please indorse and forward through the proper channel, and, if consistent, make such notice and recommendation that will insure an early reply.

Governor Overton still persistently adheres to the so-called permit law, and has the judiciary and legislative branches of the government under his complete control, and we can expect no redress, only from United States authority, in protecting us. All we ask is labor to work our farms.

The permit law stands unchanged on the statutes of the Chickasaw Nation, and it will be the policy of the judiciary to enforce it on the citizen, requiring him, under execution, to pay $25 every two weeks. He may have a United States citizen in his employ without procuring permits. Think the removal of white men still an open question with the governor. It seems to be the policy to tax the citizen, so that it will drive the white labor from the country.

If the white labor is driven from the country the fine farms in this nation will go back to wild land, no stock grazing on it, and the result must follow that invested funds held by the United States must be sold to buy bread for this people (like three years ago), thereby destroying and crippling both national and school fund of this people. The majority of the citizens of this nation are dependent on their farms for support, stock all gone, and that is their only resource for a living, except those who are officers of the nations, who receive their salaries from the *public crib*.

Respectfully, &c.,

G. W. HAWKINS.
G. D. JAMES.
J. D. HARRIS.
W. H. BOURLAND.
ROBT. H. LOVE.
S. D. JAMES.

CHICKASAW NATION, INDIAN TERRITORY,
Tishomingo City, October 29, 1877.

To his Excellency R. B. HAYES,
President of the United States:

We, your memorialists, citizens and residents of the Chickasaw Nation, Indian Territory, would most respectfully represent that on the 27th day of August, 1877, the honorable Secretary of the Interior, did render his decision, declaring that the late so-called "permit law" of the Chickasaw Nation, approved October 17, 1876, was null and void, and that "all proceedings under it must cease."

A copy of the permit law, herewith annexed and marked A, and ask to become part of this petition, and that said order of the honorable Secretary of the Interior was forwarded by the honorable Commissioner of Indian Affairs on the 3d day of September, 1877, to S. W. Marston, United States Indian agent, directing him to notify the Choctaw and Chickasaw authorities of the decision, and to inform them that the department expects their prompt and strict compliance therewith. The United States agent forwarded the order of the honorable Secretary of the Interior more than one time to B. F. Overton, governor, ordering him to lay it before the legislature, then in session, which he failed to do, and continued to do, until the legislature adjourned, leaving said "so-called permit law" on the statutes of the Chickasaw Nation.

Would further represent that the governor, B. F. Overton, did state, in a speech at an informal meeting outside of legislature hours, that he would pay no attention to the late Secretary of the Interior order, and that if the legislature would back him with the means and influence he would enforce and collect the $25 permit tax, and asked that the "permit law" remain as it was.

We would further represent that under the forty-third article of the treaty of 1866 between the United States and Choctaw and Chickasaw tribes of Indians, has the right to employ mechanics, millwrights, and men skilled in agriculture, and we are in favor of a reasonable registration fee, but claim that this nation has no right under said treaty to levy a tax of $25 on United States citizens for farming when they can pay their employer the usual rents of the states, and that said land being held in common, each and every one can cultivate as much land as he may see fit; and would further state that under the so-called "permit law" that taxation has not been equal, and most respectfully but earnestly request that the United States Indian agent be instructed and directed, with full power to send for persons and papers, and to investigate the same, or some special agent be appointed for that purpose, that justice may be done to all persons concerned.

Your memorialists would most respectfully ask that your excellencey will make such rules and regulations in conformity to treaty and intercourse law for the protection of the farming interest of this nation and public improvements, both national and private, in this nation not inconsistent with the treaty.

We further ask that the status of the United States citizen, who has married or been adopted under the seventh article of the treaty of 1855, or thirty-seventh article of the treaty of 1866, be defined by proper authority. Since the treaty of 1866 all white men who have intermarried or been adopted under the provision of said treaties have enjoyed all the rights, privileges, and franchise of a native-born citizen in this nation, until the last session of the legislature refused two white men, who were duly elected by the people and were properly authenticated, from taking their seats in the legislature (while one of them had served as representative for several years in that capacity), alleging they were white men, although

domiciled under the treaty, had no franchise, while other white men holding offices under the government respectfully claim them as *bona fide* citizens under the treaties and ask their status to be settled by the proper authority of the United States, that its operations may work equal on all.

In conclusion, your memorialists would further state, that we wish no change of government than we now have, and wish all treaty stipulations and acts of Congress for the protecting of Indians be carried out in good faith; and further, that this people are fast becoming an agricultural people; the herds of cattle, hogs, and horses are fast giving away, and the masses of the people are pursuing farming for a support. If labor is cut off from us, the many fine farms now in cultivation in this nation must become wild lands again and the invested funds we now have in the hands of the United States must be sold to buy bread, like we did three years ago; and believing we can't receive protection under the present administration now in power in this nation, who pay no regard to the constitution, laws of this nation, treaty, or proper authority of the United States, most earnestly but respectfully appeal to Your Excellency, as President of the United States, to make such rules and regulations for our better protection, in conformity to treaties and justice, for which we shall ever in duty bound to pray, &c.

LEM REYNOLDS,
Senator Chickasaw Nation.
J. A. REYNOLDS,
Member House Representatives.
CHARLEY SHECO,
Member House Representatives.
SIMON KEMP,
Member House Representatives.
C. A. BUSSIS.
J. D. HARRIS.
J. C. McCOY.
AMOS TOW-WAS-TUBBY.
R. M. HARRIS.
ALBERT McKINNEY.
ALEX. CRAVAT.
GEO. W. HAWKINS.
JAMES ALLEN.
W. H. BOURLAND.
ROBERT H. LOVE.
G. D. JAMES.
S. D. JAMES.

OCTOBER 8, 1877.

KIND SIR: I am a citizen, married here, according to the laws and regulations of the Chickasaw Nation; have my brother in my employment as a farmer, and I want a permit for him. He has been notified since the legislature adjourned to pay $25 or leave the nation, or they would put him out. So I write to you to give me a permit for him. His name is Gregory Bean. Write soon, for I am needing him.

Direct to Tishomingo, and oblige,

MRS. NETTIE SELF.

Mr. S. W. MARSTON.

STONEWALL, C. N., IND. T.,
October 23, 1877.

To the United States Agent:

I am a wagon-maker by trade, and have been residing here for the past three years, striving hard with industry and economy to make an honest respectable living.

I have just been notified by the sheriff of this county that I must either take out a permit, for which they propose to make me pay $25, or they will put me out of the nation.

I consider myself a law-abiding man, but have been told that such is not the law. I have also been told that by applying to you you would give me a permit to remain to carry on my business. If you can do so you will much oblige me. I refer you as to my character to C. C. Rooks, Thomas Phillips, William Bird, all merchants and well-known business men of this place, as to my character.

Respectfully,

JOSEPH GARNETT.

STONEWALL, C. N., 10*th*, 23, 1877.

DEAR SIR: I write you concerning the permit law of this country. I have applied to the proper officers for a permit, and they will not issue me any, unless I pay them $25. I have been ordered out. Now sir, I understand that the permit law of this country is null and void, and that you have made the assertion that the Chickasaw authorities have no right to collect the so-called permit from white men now residing in this country. Now, what shall I do? Will you send me a permit, as I cannot obtain one from the Chickasaw authorities, unless I pay them $25.

I am now in the employ of C. C. Rooks, of this place; I have lived here about two and a half years. I am a man of limited means, and do not feel disposed to pay $25, if it is unlawful.

Write me what I must do in the matter. I suppose if the Chickasaws will not grant me a permit, that you will, as I am not charged with any violation of the laws of this country. As to my character, I will refer you to C. C. Rooks, T. J. Phillips, W. L. Byrd, and L. B. Cochran, all of this place.

Respectfully,

JOHN D. HIGGINS.

S. W. MARSTON,
United States Indian Agent, Muskogee, C. N.

STONEWALL, C. N., *October* 24, 1877.

DEAR SIR: Please send me a permit to stay in the Chickasaw Nation. I am a stone mason, and would like to stay in the country, but they will not give me a permit, unless I pay them $25.

Please send it at once.

Respectfully, yours,

THOMAS JONES.

Mr. S. W. MARSTON,
United States Indian Agent.

STONEWALL, IND. T., *October* 24, 1877.

DEAR SIR: I am a blacksmith, and have been doing work here for over three years. I have a wife and four children, and I about make a good living for them. The Chickasaw authorities told me yesterday I must pay a tax of $25 or leave the nation. Now I am not able to pay such amount as that, and it is impossible for me to move at present, so I earnestly request of you to send me a permit at once if you please.

I can't hardly support my family and pay such an extortionate tax as $25. I think the United States ought to protect her citizens here as well as in foreign countries.

Respectfully, your friend,

MOSES THORP.

S. W. MARSTON,
United States Indian Agent, Muskogee, Ind. T.

STONEWALL, IND. T., *October* 24, 1877.

DEAR SIR: The sheriff came to me to-day and told me that I must pay 1 per cent. on all the goods I bought in the nation, and that I must get a permit to remain in the country, $25, and that he would only give me five days to do it in. You say this law is null and void, and action under it must cease; yet they come and force me to comply with it.

Can't you give me a permit? If you can, please send it. I will not comply to such illegal demands as the Chickasaws require.

There is a good many farmers here that will be compelled to leave on account of not being able to pay a tax of $25. Many of them has large crop of wheat sown.

You are certainly higher authority than those Indians, and you say this law is null and void, and must cease.

Please write to me and let me know why it does not cease.

Respectfully,

HILL PHILLIPS.

S. W. MARSTON,
United States Indian Agent.

WHITE BEAD HILL, *October* 31, 1877.

To the agent of the Indian Nation:

SIR: Governor Overton says that he will collect the $25 permit until stopped by the United States. We want to know how to act, and what you will defend us in the condition of the matter. You know how you are going to act and how far you are going to let them go. I am reliably informed that the sheriff of Pantotact County and the light horseman is out collecting permits authorized by the governor. I hope that you will accommodate us with a letter as soon as you get this letter.

Here is the names of the citizens of our neighborhood: L. F. Casan, Charles Hulsey, Charles Winter, R. C. Florence.

Write to White Bead Hill, Ind. T., C. N.

EXHIBIT No. 28.

UNITED STATES SENATE,
Washington, D. C., January 21, 1878.

SIR: I inclose a letter addressed to you, but sent to me for delivery; as requested, I have made myself familiar with its contents. In your letter to the Commissioner of Indian Affairs of date the 27th of August last, in reviewing the question of the right of the Chickasaw Nation of Indians to tax white men who were employed by Indians to work on their farms, you used this language: "Without entering upon a discussion of the law of taxation, I concur in the opinion of my predecessor, that the forty-seventh article of the treaty of 1866, prescribes the only mode by which a system of taxation can be adopted by either of said nations; and that until the provisions of that article are complied with, neither of said nations have any authority to pass or enforce a law on that subject."

A copy of this letter with the instructions of the Commissioner were furnished the chiefs of the Choctaw and Chickasaw Nations; since then, however, the Chickasaw council has passed a law taxing members of the Chickasaw Nation $25 for every white man they employ who is not a member of the tribe. This, it seems to me, is in plain defiance of your instructions, and the provisions of the forty-seventh article of the Choctaw and Chickasaw treaty of 1866. I understand that the Chickasaw law, as it now stands, taxes every member of the tribe $25 for every laborer, and if they do not pay that amount within fifteen days, they double the tax and keep on doubling it for every fifteen days' failure. This works a special hardship on widows whose only resource is the product of their farms.

I respectfully call your attention to this matter, and hope you will find some way to remedy the evil.

Very respectfully,

D. W. VOORHEES.

Hon. CARL SCHURZ,
Secretary of the Interior.

COLBERT'S STATION, CHICKASAW NATION,
INDIAN TERRITORY, *January* 9, 1878.

SIR: I am a white man and a citizen of the United States. For the last ten years I have been living in the Chickasaw Nation cultivating land for different citizens of this nation. I am at present working on the farm of Mr. A. G. Long. I have six children; my wife died a few weeks ago, and is buried in the nation. A year ago the Chickasaw council passed a law taxing every white man who worked upon the farm of a Chickasaw, $25 a year; this in effect would prohibit the employment in this nation of white labor. It worked a great hardship upon persons like myself who were living here with their families, and who were not able to pay year after year the unreasonable permit for themselves and others whom they might employ to assist them in saving their crops.

The question was submitted to your department, and you decided that this tax law was null and void. Yet, since your decision, Governor Overton boasts that he has compelled white men to pay the tax in spite of you; and he declares that if he is prevented from enforcing the tax from white men, he will compel Chickasaw citizens to pay $25 for every white person they may employ to work on their farms.

I respectfully ask if Governor Overton is to be permitted to thus set at naught the official rulings of your department; and if I, and hundreds of others like myself, who are rightfully here cultivating the soil, can be driven out of the Territory, because we or our employers are unable to pay $25 tax a year.

I send this through Senator Voorhees of Indiana, who I know will take an interest in the bond working farms in this country.

Very respectfully,

J. W. ROGERS.

Hon. CARL SCHURZ,
Secretar of the Interior.

EXHIBIT No. 29.

CHOCTAW NATION, EXECUTIVE OFFICE,
Atoka, January 10, 1878, *Ind. T.*

SIR: Herewith inclosed, find a copy of a resolution of the general council of the Choctaw Nation authorizing me to get the decision of the Hon. Secretary of the Interior of August 27, 1877, upon the validity of the permit laws of the Choctaw and Chickasaw Nations set aside or rescinded.

The permit laws of the Choctaw and Chickasaw Nations prescribe the terms and conditions upon which white persons may enter the said nations and remain or be temporarily employed therein.

Also, inclosed find a copy of a communication addressed by me to the Hon. Commissioner of Indian Affairs in September, 1877, protesting against said decision of the Hon. Secretary of the Interior, and to which, so far as I know, no notice has been taken.

Now, sir, I appeal to you as the supreme arbiter, through whom we hope and believe our grievances will be heard and redressed. I invite your attention to the inclosed communication to the Commissioner of Indian Affairs, with the confidence that you will find our reasoning good and legal, and besides, I desire to supplement herein with a few additional points; but before going further, I desire to refer you to the report of the Commissioner of Indian Affairs upon this subject of March 23, 1877, and the adoption of said report by the Hon. Secretary of the Interior of April 2, 1877, as well as the decision of the Secretary of August 27, 1877, to which latter we so seriously and earnestly object.

We believe that the Commissioner of Indian Affairs, in his report or decision of March 23, 1877, took the correct, legal, manly, independent, and treaty view of the subject. If my rendering of the forty-third article of the treaty of 1866 as to white persons is not correct, it is strange that at that date, when the public sympathy of the United States Government was so strongly in favor of the freedmen or colored people, the United States Senate and President Johnson should have ratified the said treaty of 1866.

The honorable Secretary of the Interior either boldly arrays himself against the general interpretation of the fourteenth amendment to the Constitution of the United States, or he as boldly overrides our treaties, one or the other. The treaties are as sacred to us as your Constitution is to your people. All we ask is a proper observance of our treaties, and we believe the general and public feeling of the people of the United States is in favor of; but we mourn the fact that public officials can be privately influenced so unduly to commit their government to errors.

With the hope that your Excellency will order the matter in controversy investigated thoroughly, and reported upon according to law and treaties, and set the matter at rest forever, and have me duly informed, I am most respectfully,

Your obedient servant,

COLEMAN COLE,
Principal Chief, Choctaw Nation.

His Excellency R. B. HAYES,
President of the United States, Washington, D. C.

BILL No. 17.

A RESOLUTION authorizing the principal chief to attend to the permit business.

Be it resolved by the general council of the Choctaw Nation assembled, That the principal chief is hereby authorized to correspond with the President of the United States and the department at Washington, and try and get a late decision of the Secretary of the Interior in regard to permits set aside.

Resolved further, That this resolution take effect and be in force from and after its passage.

Approved October 23, 1877.

COLEMAN COLE,
Principal Chief, Choctaw Nation.

Proposed by—
McKEE KING,
Chairman Committee on Chief Message.

EXECUTIVE OFFICE, CHOCTAW NATION,
Atoka, September 20, 1877.

SIR: I am in receipt, through S. W. Marston, United States Indian agent, of a copy of your communication to him of the 3d instant, referring to a decision of the Secretary of the Interior of the 27th ultimo, upon the validity of the "permit law" of the Chickasaw Nation,

which Governor Overton of the Chickasaw Nation attempted to enforce upon one Dr. T. F. Ealy, teacher of the freedmen school at Fort Arbuckle, to the amount of $25.

It is strange that so exalted an officer of the United States Government as the honorable Secretary of the Interior should commit the government to a decision on April 2d, and then upon the 27th of August of the same year decide just the reverse.

Here is a manifestation of rashness, hastiness, and instability entirely foreign to the character of the honorable Secretary, and very unusually characteristic of a high public functionary.

The facilities and sources of information for the honorable Secretary were certainly as good on April 2d as on August 27th.

I propose to make no objections as to the particular case of Dr. T. F. Ealy, but when the honorable Secretary is induced to make the sweeping declaration that neither the Choctaws nor the Chickasaws have any authority to pass or to enforce a law upon the subject of taxation except under the provisions of article 47 of the treaty of April 28, 1866, my official capacity and manly consciousness alike demand that I take issue with him.

The honorable Secretary could not have examined that article 47 with much care or thought or he would have seen that contingency none the less uncertain yet; that treacherous proviso and that condition yet unfulfilled. He would have seen that the only thing which can give it any force or even a name is the survey and assignment of the Choctaw and Chickasaw lands in severalty. The honorable Secretary ought to know this has not been accomplished, and the honorable Secretary ought also to be informed that no application has been made by the respective legislative councils of the Choctaws and Chickasaws for their invested and trust funds in the hands of the United States Government to be capitalized or converted into money; that these funds have not been converted into money, and consequently no divisions and payments made "per capita" to the individuals thereof respectively.

Without the fulfillment of the first part of that forty-seventh article the proviso is of no more value than the same amount of blank paper.

The honorable Secretary should know that not only the forty-seventh article but many other articles of the treaty of 1866 possess no force under the present holding of Choctaw and Chickasaw lands. Articles 3 and 11, and many other articles and parts of articles of the same treaty, have conditions which destroy their force entirely. But for the sake of argument let us assume that the proviso of that forty-seventh article is law and treaty. When the subject of taxation is introduced, it must have an object. Now what is that object? An individual of dull perception cannot fail to see that it is the lands of the Choctaw and Chickasaw country, and that no other kind of taxation is even implied.

Why restrict the Choctaws and Chickasaws, say you, to the satisfaction of the President of the United States in the matter of taxation upon lands in their own country? Evidently for the protection of the negroes and Kansas Indians whose tenure of lands is presupposed.

If the honorable Secretary will follow us to article 10 of the treaty of 1866, we will find an article that will do to rest on, and one which points us back to previous treaties, and we have to go no further back than to article 7 of the treaty of 1855, where we find no treacherous proviso to stumble over; where we find out what an intruder is and what is to be done with him; and where we find that the duties of all parties concerned, or all who may become concerned, are marked out in plain and unmistakable language.

The honorable Secretary's construction of the forty-third article of the treaty of 1866 makes it impossible to tell who and what an intruder is. The latter part of this forty-third article reads as follows: "But this article is not to be construed * * * to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of said nations."

The question arises here, what are works of internal improvement? Are not the employment of skilled laborers, agricultural and mechanical; the building up of schools; the opening up of farms; the operating of mines, &c., all works of internal improvement? No one will say to the contrary, and yet the honorable Secretary dictates a limitation to our treaty rights. The further fact that the word "temporarily" is thrown in between the words "employment" and "of white persons who are teachers, mechanics, or skilled in agriculture," shows that there was some limitation intended upon their indiscriminate and permanent employment.

The Choctaws and Chickasaws both have had permit laws for many years, and with the knowledge and assent of the different United States Indian agents.

Another potent reason why the honorable Secretary's rendering of that forty-third article will not do, is that it makes distinctions among persons on account of color, in direct variance with the fourteenth amendment to the Constitution of the United States.

My rendering shows that this distinction of color was made in deference to the rights and wishes of the Choctaws and Chickasaws. To their rights, because they were allowed to exercise their choice as to whom they would permit to come among them; and to their wishes, because it was well known that they desired to get rid of the negroes who were already among them.

No good citizen will object to contributing his equitable share of support to the government

of the country in which he lives. The vicious, lazy, improvident, and otherwise unworthy, labor most to escape, evade, and elude this duty of contributing to government and upholding of law, and yet these are the very classes of persons whom the honorable Secretary has publicly invited to come and live among us—above all men those whom we do not want and who are nuisances in any country.

We cannot believe the honorable Secretary is properly represented in the decision of August 27, 1877, and we beg of you, sir, to press this matter upon the honorable Secretary again and get back to your generous, candid, and gracious decision of April 2, 1877.

Very respectfully, your obedient servant,

COLEMAN COLE,
Principal Chief Choctaw Nation.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

PROCLAMATION BY COLEMAN COLE, PRINCIPAL CHIEF CHOCTAW NATION.

To the people of the Choctaw Nation and all concerned:

Proclamation.

EXECUTIVE DEPARTMET, CHOCTAW NATION,
Atoka, Choctaw Nation, April 19, 1877.

Know ye that some time previous to January last, Mr. S. W. Marston, United States Indian agent at Muscogee, wrote letters to certain parties in the Chickasaw Nation, which bore the authority of a decision upon a point of law, and which, if recognized and enforced, was subversive alike of certain rights and privileges of the Choctaws as well as those of the Chickasaws.

In accordance with my sworn duty to protect the laws of the Choctaw Nation, I could not conscientiously pass unnoticed a matter of such grave importance. I therefore addressed a letter to the Secretary of the Interior demanding his immediate action in the matter.

As the result of my request, I herewith append, for the guidance and information of all concerned, the following communications from the Secretary of the Interior and Commissioner of Indian Affairs, which in my opinion fully sustain the position claimed and taken by the Choctaws.

Very respectfully, your obedient servant,

COLEMAN COLE,
Principal Chief Choctaw Nation.

DEPARTMENT OF THE INTERIOR,
Washington, April 2, 1877.

SIR: Your letter of January 31 ultimo, requesting the removal of your agent, Mr. S. W. Marston of the Union agency, has been received.

I have considered the subject of your communication, and have conferred with the Commissioner of Indian Affairs, who has submitted to me a report in the premises, a copy of which I inclose herewith for your information; and while it appears that Agent Marston committed an error in writing the letter, a copy of which you sent to me, I am of the opinion that his offense is simply an error of judgment upon a point of law, which would not at all justify his removal.

Very respectfully, &c.,

C. SCHURZ,
Secretary,

COLEMAN COLE,
Principal Chief Choctaw Nation, Indian Territory.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 23, 1877.

SIR: I have the honor to acknowledge the receipt, by your reference, from the President for report, of a letter dated the 31st ultimo, from Coleman Cole, principal chief of the Choctaw Nation, inclosing a copy of a letter from S. W. Marston, United States Indian agent, to certain citizens of the Chickasaw Nation, and demanding the immediate removal of the agent for having written this letter.

The substance of the charge made by the chief against Agent Marston is that the legislature of the Chickasaw Nation having by act approved by the principal chief, October 17, 1876, imimposed a "tax of $25 each upon white persons skilled in agriculture," who are not citizens of that nation, but are employed by citizens thereof, the agent had declared said act to be null and void, inasmuch as it had not been approved by him and was without authority of law. This decision Chief Cole alleges to be equally applicable to the Choctaw Nation, and hence his demand for the removal of the agent.

The treaty provisions regulating the presence of persons not members of the Choctaw and Chickasaw Nations within their territorial limits, are found in article 7 of the treaty of 1855 (Stat. at L., vol. 11, page 512) and in article 43 of the treaty of 1866 (Stat. at L., vol. 14, page 771). The former article, which is in force subject to the modifications made by the latter, gave to the Choctaws and Chickasaws the "unrestricted right of self-government and full jurisdiction over persons and property within their respective limits."

Exception was made in this article, however, to all persons with their property who were not members of the Choctaw or Chickasaw tribe. Such persons were to be considered as intruders and removed by the United States agent, with certain exceptions, these being—

1st. Employés of the government and their families;

2d. Persons traveling or residing in the Territory under license from the proper authority of the United States; and

3d. Persons residing there by the permission of the Choctaw or Chickasaw authorities with the consent of the United States agent.

It seems to me that this article was intended to grant or guarantee to the Indians full control over any persons who were allowed to remain within their respective territorial limits, and that persons who were not citizens of the nations, could escape taxation only by removal from their Territory.

By article 43 of the treaty of 1866, the United States stipulated to remove all white persons except government officials or officers of any internal improvement company, or persons traveling through or tempraly sojourning in the Territory, exception being made, however, in favor of teachers, mechanics, or persons skilled in agriculture.

In respect to these, both the United States and the Indians agreed that the power of the United States should not be exerted in behalf of their removal. Whether they should go or stay is a question to be settled by the parties in interest. If the Chickasaws should deem it best to effect their removal, it is entirely competent for them so to do. If, on the other hand, the Chickasaws see fit to let them stay, I do not see how the persons thus favored can complain if they are called upon by the Chickasaws to bear their share in support of the national government. If such persons desire the protection of the United States, they can readily obtain it by removing to some State or Territory where no Indian nation invested by solemn treaty with the "unrestricted right of self-government and full jurisdiction over persons and property" can claim authority over them.

Having voluntarily fled their responsibility as citizens of the United States, and come under the jurisdiction of this Indian nation, they cannot expect the government to violate a treaty to relieve them from the consequences of their own act.

Upon the propriety or wisdom of this legislation I do not venture to express an opinion; the settlement of that question is left exclusively to the Indians by the 7th article of the treaty of 1855.

The action of the agent, therefore, appears not to have been fully warranted; but there is no reason to suppose that it was due to anything further than erroneous judgment upon a point of law; and I see no reason for acceding to the demand of the principal chief of the Chickasaws and Choctaws for his removal.

Very respectfully,

J. Q. SMITH,
Commissioner.

To the honorable the SECRETARY OF THE INTERIOR.

This decision is regulated and defined from meaning of the spirit of the treaties and it is heartily approved by me.

COLEMAN COLE,
Principal Chief Choctaw Nation.

[Slip from newspaper published at Eufaula, Ind. T.]

The right of taxation.

We publish on our first page a letter from the Secretary of the Interior to the Commissioner of Indian Affairs, by means of which letter that Secretary undertakes to deny that any Indian nation has any right to levy any tax whatever on any person or anything without previous approval by the President of the United States.

The occasion which called forth the letter was as follows:

Last year the Chickasaws decreed that such non-citizens as were not by the stipulations of any treaty between the United States and the Chickasaws entitled to a residence within the border of the Chickasaw Nation, might obtain from that nation authority to that effect from year to year on payment of a sum of twenty-five dollars for a yearly permit, instead of being removed as intruders under the United States statute regulating the intercourse with Indian tribes.

Mr. Marston, the United States Indian agent at the Union Agency, which agency contains the territory of the Chickasaws, objected to this permit law, and attempted to inhibit the collection of sums of twenty-five dollars for permits. The ground he took was that no Indian nation has the right to collect any tax not previously approved by the Indian agent placed with such nation.

The Commissioner of Indian Affairs overruled the objection made by Agent Marston, and the tax was collected.

The Secretary of the Interior now overrules the ruling of the Commissioner of Indian Affairs, and sustains the objection made by Agent Marston except in this, that an Indian nation, in order to be able to enforce any tax law, does need the approval, not of the Indian agent, but of the President of the United States. The Secretary further assumes that to persons not entitled by any treaty between the United States and an Indian nation to a residence within the borders of said nation, such right can be granted by such nations only with the approval of the Indian agent residing with such nation. Further, that no non-citizen not entitled to a residence under any treaty can be removed except by the authority of the United States, and that such authority can be employed only at the request of the Indian agent. Lastly, the Secretary enumerates whole classes of persons who, he claims, though non-citizens, have the right to reside among the Choctaws, albeit not expressly authorized to do so by any treaty.

We consider the Secretary's letter as a most ill-advised document, and the views therein expressed, on the relation between the United States and the Indian nations, as incorrect and bad in law. We shall join issue with him on every one of the four propositions it contains. Now we can only begin to speak of the right to tax, but we shall continue the subject, and later reach the other points. Meanwhile we hope that the different national councils, now either already in session, like that of the Chickasaws, or about to meet, like that of the Creeks and Choctaws, of nations directly affected by the Secretary's ruling, will take the necessary stepsfor the preservation of their rights. As Governor Overton correctly said in his last able message to the Chickasaw national legislature, every Indian nation should have at Washington a competent and trustworthy agent to guard such nation's interests, so far as they can be affected by any action of the United States Federal administration or of the Congress of the United States. But more yet is required.

The time for exclusive reliance on palavers with the "great father" is past. Indian matters should be brought to the notice of the people at large of the United States, of that people whose servant, to be instructed by them and accountable to them, that "great father" is. And when a difference of opinion exists between an Indian nation and the United States Federal administration as to the interpretation of a treaty, means should be sought to have the matter determined, not by a cabinet officer or any of his subordinates, but by the Supreme Court of the United States. We believe the latter might perhaps be done in the matter of the Chickasaws' permit laws. Suppose the Chickasaws disregard the ruling of the Secretary of the Interior, and continue to enforce their permit law by means of their militia? Non-citizens aggrieved by that action will cause the militiamen enforcing the law to be brought before the United States court at Fort Smith. That court, with its known jurisprudence in Indian matters, may decide against the militiamen, but an appeal from its decision will bring the matter before the Supreme Court of the United States. That last tribunal no Indian need fear. Like the people at large of the United States, it is free from the influences liable to control government employés and individual members of Congress.

The American nation is sick of the scoundrelism and imbecility which have from time immemorial characterized the treatment of Indian nations and tribes. That treatment is felt to be a national disgrace. Just now costly and ignominious Indian wars are being waged, which further condemn that treatment. Land-grabbers and contractors are unpopular. Great philanthropists begin to take up the Indian's wrongs. The great heart of the American people once touched, back-stairs influence and paltry intrigue will be at an end. Before the storm of public indignation no man can stand.

This article is only introductory. We will, however, even to-day, examine the Secretary's ground for denying the Indians the right of levying any tax whatever. He seeks such ground in article 47 of the treaty between the United States of America and the Choctaw and Chickasaw Nations. That article reads as follows:

"As soon as practicable after the land shall have been surveyed and assigned to the Choctaws and Chickasaws in severalty, as herein provided, upon application of their respective legislative councils, and with the assent of the President of the United States, all the annuities and funds invested and held in trust by the United States for the benefit of said nations, respectively, shall be capitalized or converted into money, as the case may be; and the aggregate amount thereof belonging to each nation shall be equally divided and paid *per*

capita to the individuals respectively, to aid and assist them in improving their homesteads and increasing or acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of their lands in severalty will involve:

"*Provided, nevertheless,* That there shall be retained by the United States such sum as the President shall deem sufficient of the said moneys to be invested, that the interest thereon may be sufficient to defray the expenses of the government of said nations respectively, together with a judicious system of education, until these objects can be provided for by a proper system of taxation; and whenever this shall be done to the satisfaction of the President of the United States, the money so retained shall be divided in the manner and for the purpose above mentioned."

The article treats of the consequences of a survey and assignment of lands in severalty to the Choctaws and Chickasaws, which survey and assignment can only take place upon application of the legislative councils, and with the assent of the President of the United States. It is said that in case of such survey and assignment in severalty, all the annuities and funds invested and held in trust by the United States for the benefit of said nations, respectively, shall be capitalized or converted into money, and the aggregate amount thereof belonging to each nation equally divided and paid *per capita* to the individuals respectively:

"*Provided, nevertheless,* That there shall be retained by the United States such sum as the President shall deem sufficient of the said moneys to be invested, that the interest thereon may be sufficient to defray the expenses of said nations, respectively, together with a system of education. The retention of moneys shall continue until a proper system of taxation shall, to the satisfaction of the President, have been provided for these objects. Whenever this last is done, the money till then retained shall be divided like other money will have been before then."

This article does not touch the subject at all. It speaks of what shall be done with the national funds whenever the land-grabber's dream of dissolving the tribal relations, of extinguishing the Indian title, of giving a small portion of the land in severalty to the Indians, of granting several millions to railroad companies, and of throwing the rest open to settlement by whomsoever wants to homestead or pre-empt it, shall be realized. The realization of this dream in the only legitimate way possible by a suicidal wish of the nation herself, is not probable, and were a realization attempted in any other way, a war of extermination, soaking the land in blood, would first have to be waged. But suppose such things did happen; then the funds belonging to the nation, or what little there might be left of such nation after the slaughter, would have to be divided among the individual members, except so much as the President of the United States might deem necessary to cover the expenses of such nation or remnant governing herself and educating her youth; little there would be to govern and little to educate; it could not cost much; but should the nation or her remnant tax herself for these governmental and educational purposes, then that driblet of funds shall also be divided. It is, however, necessary the President should first be satisfied the means will really be raised, and therefore the system of taxation must first be approved by him. This article 47 is to guard against insufficient tax-laws under a certain contingency. How can it be construed in a surrender of the right to levy taxes, which right is inherent not only in every sovereign nation, but also in every community, which, though not sovereign, is possessed of autonomy. Mr. Schurz, when for the first time at Bonn attending a lecture on logic, would not have fallen in such a fault of reasoning. He cannot possibly have written the letter which bears his signature. Neither does the ruling made by Chandler, Mr. Schurz's predecessor, affect the case. That ruling, whatever may be the weight to be attached to it, anyhow has reference only to the taxation of certain property claimed to have been exempted from taxation by a special clause of the treaty of 1866. The railroad company pleads privilege. All analogy fails. The two cases have nothing in common.

EXHIBIT No. 30.

WASHINGTON, D. C., *January* 30, 1877.

SIR: I have the honor to present herewith a letter from various citizens of the Chickasaw Nation, complaining of unlawful and oppressive acts on the part of the legislative, judicial, and executive departments of the Chickasaw Nation, appointing myself as their special agent, and instructing me to urge upon the Government of the United States early and decisive action in the interest, specially, of the agriculturists of the Chickasaw Nation touching the questions submitted for its decision.

It is an ungracious act to complain of the proceedings of our own government to that of another; but the total disregard of our written constitution, our laws, and the treaties between the United States and the Chickasaw Nation, which has characterized the present administration of the government of our nation, known as the Overton administration, makes it a duty to appeal to the Government of the United States, under whose protection

our people have placed themselves, and which is guaranteed to them by treaties. Among the acts of our government showing an utter disregard of our constitution and laws, I beg leave to call your attention to the facts connected with the management of our school funds, all which are matters of record.

Under article 3 of the constitution of the Chickasaw Nation, section 1, it is declared "that the powers of the government of the Chickasaw Nation shall be divided in three distinct departments, and each of them confided to a separate body of magistracy, to wit: Those of the legislature to one; those of the executive to another; and those which are judicial to another. And no person, or collection of persons, being one of these departments, shall exercise any power properly attached to either of the others." (Laws of the Chickasaws, edition of p. 6.)

By article 5, executive department, section 1, "the supreme executive power of the nation shall be vested in a chief magistrate, who shall be styled the governor of the Chickasaw Nation."

"SECTION 6. The governor shall have the power to enforce the laws, assisted by the militia if necessary. He shall have power to compel all the officers of this nation (except the members of the legislature) to discharge the duties of their respective offices; and for any neglect of duty, or other misdemeanor in office, he shall suspend the officer so offending until a judgment is given of acquittal or condemnation."

By law, the superintendent of education among the Chickasaws contracts for the management of public schools and academies; and upon his certificate that those having charge of such institutions of learning have faithfully discharged their duties, the auditor of public accounts is required to issue his warrant upon the national treasurer for the amount of compensation due them.

In the case referred to, the superintendent of education refused to issue his certificate in favor of the person having charge of Lebanon Academy for orphan children, alleging that said contract had not, in several important particulars, been complied with. The matter was referred to Gov. B. F. Overton, who proceeded to suspend the superintendent of education, and sent the case before the court. He then appointed a *pro tempore* superintendent, and required him to issue his certificate to the complainant, which was done; and thereupon the auditor issues his warrant on the treasurer, and the money claimed, amounting to six thousand dollars, was paid. All this while the matter was pending in court, and when the trial came the court and jury decided that the superintendent of education had done his duty in refusing the certificate. The superintendent having been acquitted, again entered upon the discharge of his duties, but the money was gone, and to this day has not been properly accounted for.

The mere statement of the facts is sufficient to show that the governor disregarded the constitution, and unlawfully caused the school funds to be drawn from the treasury of the nation and paid over to the contractor having charge of Lebanon Orphan School, and shows that this administration cannot be safely trusted with our public funds.

A like disregard of the constitution, the laws, and the treaties, on the part of our governor, has been exhibited in other later instances. In fact, with a subservient legislature and judiciary, he has concentrated all the powers of the three departments of the Chickasaw Government into one, and thus, by a combination of the other two with the executive, he has overturned a constitutional republican government among our people, and instituted the worst form of tyranny.

By an act of the legislature, approved October 17, 1876, it was declared—

"SECTION 1. That non-citizens of any State or Territory of the United States, wishing to hire or rent land, or be otherwise employed in this nation, shall be required to enter into contract with a citizen, said contract to be reported by the citizen to the county clerk of the county where the said citizen resides."

This section was changed by striking out the word "non," so as to make it read "citizen of any State or Territory of the United States."

This was done, not by the legislature or by its authority, but by some unauthorized person; and the governor, with full knowledge of the fact, caused the law thus changed to be certified to by the national secretary and promulgated as the law of the Chickasaw Nation, and proceeded to enforce it, not in the ordinary mode, by the courts and its officers, but by calling out the militia, backed by a detachment of United States troops which he had succeeded in obtaining from the commanding officer at Fort Sill under the pretext that they were needed to assist in expelling desperadoes and other lawless persons from the limits of the Chickasaw Nation. This procedure was without constitutional authority, inasmuch as no resistance had been offered to the enforcement of the so-called law. Under section 2, of said pretended law, non-citizens were required to pay to the clerk of the county court of the proper county, the sum of $25 for a permit to reside or to be employed within the Chickasaw Nation. But the governor, backed by a select body of the militia and the United States troops, in many instances collected the tax personally, in violation of the very law he professed to enforce, giving orders to the clerks of the county courts to issue permits, which was done in all the counties of the nation except one, that of Pinola County, in which the clerk refused to issue the permits under the orders of the governor, unless accompanied by the money, for which, under the law, the clerk and not the governor was required to account

to the national treasurer. Moreover, the governor, instead of turning over the money collected by him to the clerks, or to the national treasurer, used a large portion of it at his own discretion and without warrant of law in defraying the expenses of the militia, who had been called out without any evidence of necessity.

Complaints on the part of individuals finally reached the Department of the Interior, touching these high-handed measures, and upon full consideration of the general permit law above referred to, on the 3d day of September, 1877, the Commissioner of Indian Affairs addressed a letter to S. W. Marston, United States Indian agent, Muskogee, Indian Territory, informing him that on the 27th of August, 1877, the honorable Secretary of the Interior had decided to the effect that the so-called "permit law of the Chickasaw Nation" is null and void, and that "all proceedings under it must cease."

The Commissioner of Indian Affairs also indorsed a copy of said decision, and instructed the United States Indian agent to "at once notify the Choctaw and Chickasaw Nations of its purport, and inform them that the department expects their prompt and strict compliance therewith."

The United States Indian agent accordingly addressed a communication to the governor of the Chicksaw Nation, inclosing a copy of the decision of the honorable Secretary of the Interior, and the letter of the Commissioner of Indian Affairs, with request that the governor would lay the same before the legislature then in session, with the further request on the part of the United States agent, that the legislature would take the necessary steps to have the tax which had been unlawfully collected, returned to the parties from whom it had been received.

No attention was paid by the governor to the decision of the Department of the Interior and the letter of the agent, further than to speak of the same in the most contemptuous manner, and to declare, if the Chickasaws would back him, that he would continue to enforce said so-called "permit law" at all hazards, and at all events he would enforce the fifth section of said law, which imposes a fine of $25 on each citizen of the Chickasaw Nation who shall employ a non-citizen of said nation for more than fifteen days without payment of the $25 tax having been made, and a permit obtained according to said act, approved October 17, 1876.

The governor has ever since acted with the same disregard of the decision of the honorable Secretary of the Interior; and the courts and officers of the nation are attempting, it is believed with orders from the governor, to enforce the same; at all events, the judge of the circuit court, at its late session in Pinola County, instructed the grand jury to enforce the so-called law, by finding bills of indictment against those who have failed to obey it. These instructions can apply to none other than citizens of the nation, as it is not pretended that citizens of the United States can be proceeded against in the Chickasaw courts. Moreover, the judge of the county court of Pinola County has by public notice posted on the court-house door, called upon all citizens to observe and comply with the requirements of the so-called permit law, upon pain of being arraigned for neglecting to obtain permits for non-citizens in their employment.

It is most respectfully submitted that these proceedings of the executive and judicial officers of the Chickasaw Nation bring them in direct opposition to the officers of the United States Government who have the charge and management of Indian affairs. They have produced uneasiness in the minds of the peaceable, discreet, and patriotic portion of our people who deprecate any collision between the United States and the Chickasaw Nation. Moreover, the difficulty of obtaining labor for the cultivation of their farms is greatly increased thereby, and all hope of profit from agricultural pursuits is well-nigh lost under the apprehension that they will be compelled to pay the tax of $25 for each laborer employed, or else be subjected to fine and imprisonment for non-compliance with the so-called law, which, as before stated, has been declared by the honorable Secretary of the Interior to be null and void.

There is no appeal from the decision of our courts and the actions of its officers to any other court, inasmuch as, though questions arising under treaties with the United States Government are within the jurisdiction of the United States court, we, as Indians, being neither foreigners or citizens of the United States or Territories thereof, have no status in said courts. There is no way that we are aware of to carry a case from our courts to those of the United States. In law we are minors and wards of the United States Government, and are advised that there is no remedy for the oppression to which we are subjected in this connection, except by an appeal to the power which has assumed by treaty with us the functions and duties of guardian and protector. As the representative of the oppressed people of the Chickasaw Nation, I appeal to you, and through you to the honorable Secretary of the Interior, and to the President of the United States, to protect us in the rights secured to us by the forty-third article of the treaty of 1866, to employ "teachers, mechanics, and persons skilled in agriculture," who surely cannot be considered intruders, when thus employed under what may be termed a treaty permit, granted by the United States to the Choctaw and Chickasaw Nations in said article of the tripartite treaty of 1866.

Trusting, sir, that the foregoing statement of facts will convince you of the necessity for speedy, public, and decisive action on the part of your government in the interest of the

agriculturists among our people, the season for preparation for planting now being far advanced,

I am, sir, your obedient servant,

LEM REYNOLDS,
Special Agent for the Farmers of the Chickasaw Nation.

To Hon. E. A. HAYT,
Commissioner of Indian Affairs, Department of the Interior.

CHICKASAW NATION, COUNTY OF PANOLA,
January 16, 1878.

I do hereby notify all non-citizens of Panola County, Chickasaw Nation, to get out permits under the present law by February term of county and probate court.

Given under my hand this 16th day of January, 1878.

C. B. KINGSBERY,
County and Probate Judge of Panola County, Chickasaw Nation.

I do hereby certify that the above is a true and correct copy of the original order or proclamation that was stuck up at the court-house door in Panola County, Chickasaw Nation.

Given under my hand and seal of office this 26th day of January, A. D. 1878.

[SEAL.]

BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

THE CHICKASAW NATION
versus.
LEM REYNOLDS.

Defendant charged with violation of the fifth section of the permit-law, approved October 17, 1877.

This court being ordered by a writ of mandamus from the supreme court of the Chickasaw Nation, dated October 1, 1877, ordering and directing the district judge to put this case upon trial:

Now, therefore, I, Overton Love, district judge of the Chickasaw Nation, do this day dismiss the case of Lem Reynolds, charged with violating the fifth section of the permit-law, on the record of the court, on the ground there being no indictment, presentation, or evidence in the case.

January 8, 1878.

OVERTON LOVE,
District Judge, Chickasaw Nation.

Attest:
B. F. GREENWOOD, *Clerk.*

I do hereby certify that the above is true and correct, as will show on record in my office.

Given under my hand and seal of office this 8th day of January, 1878.

BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

Copy of permit-law attached.

SUPREME COURT ROOM,
Tishomingo City, Chickasaw Nation, October 1, 1877.

It is the opinion and decision of the court that Lem Reynolds is entitled to a trial in the district court in Panola County, charging him with violating permit-law of the Chickasaw Nation, passed and approved in the month of October, 1876.

Now, therefore, we, the supreme judges of the Chickasaw Nation, do, in conformity of the constitution and law of the Chickasaw Nation, order T. B. J. Johnson, district judge of the Chickasaw Nation, to take said case and put it upon trial.

Herein fail not to obey the order of this court.

Given under our hands and seal the day and year above written.

[SEAL.]

his
ABIJAH + COLBERT,
mark.
Associate Judge, Chickasaw Nation.

[SEAL.]

his
WM. + HARKINS,
mark.
Associate Judge, Chickasaw Nation

Attest:
[SEAL.] I. A. BURRIS,
Supreme Clerk, Chickasaw Nation.

I do hereby certify that the above is true and correct copy of the original now in my office.
Given under my hand and seal of office this 8th day of January, 1878.
[SEAL.]
B. F. GREENWOOD,
Clerk of Panola County Court,

Petition.

To his honor THOMAS JOHNSON,
Judge of the District Court of the Chickasaw Nation:

The petition of the undersigned citizens of said nation, county of Panola:

We, the complainants against Benjamin F. Greenwood, clerk of the district court for the county of Panola;

Whereas we, the undersigned citizens, believe that there has been money unlawfully collected from us under the so-called permit-law, passed the legislature October 17, 1876; and

Whereas there is no relief save in the court in the case above mentioned;

Your complainants pray that a writ of injunction be served to enjoin and restrain Benjamin F. Greenwood, clerk of said court for Panola County, from paying over our money to the national treasury until the matter can be decided by the court. We humbly pray.

J. A. SMITH.	CHARLES EASTMAN.	JOHN MAUPIN.
JACKSON KEMP.	CHARLES SHECO.	JOHN CRAVENS.
THOMAS BARKER.	HENRY HAMBLIN.	JAMES FRANKLIN.
J. H. FINCH.	DAVID COLBERT.	DAN COLLINS.
WM. BACON.	WM. KEMP.	D. W. FINCH.
LITTLETON SHECO.	ISOM SHEOPA.	

I hereby certify that the above is true and correct copy of the original now in my office.
Given under my hand and seal of office this 8th day of January, 1878.
[SEAL.]
BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

The case of Lem Reynolds was called and dismissed for the following reasons, to wit:
1st. It not come from the county court in the proper form.
2d. The district court could not try the illegality of the legislature.
July 5, 1877.

T. B. JOHNSTON,
District Judge, Chickasaw Nation.

I do hereby certify that the above is true and correct copy of the original now in my office this 9th day of January, 1878.
[SEAL.]
BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

Rock Springs County and Probate Court.

THE CHICKASAW NATION
vs.
LEM REYNOLDS.

Charge of misdemeanor or violation of the 5th section of the late permit-law, passed October 17, 1876.

I, C. B. Kingsbery, county and probate judge of Panola County, C. N., have this day assessed a fine of $25 against said Lem Reynolds for violation of 5th section of the late permit-law, passed October 17, 1876.
Given under my hand this 18th day of April, 1877.

C. B. KINGSBERY,
County and Probate Judge of Panola County, Chickasaw Nation.

Attest:
B. F. GREENWOOD, *Clerk of Court.*

I do hereby certify that the above is true and correct, as will show on record in my office.
Given under my hand and seal of office this 8th day of January, 1878.
[SEAL.]
B. F. GREENWOOD, *Clerk.*

THE CHICKASAW NATION
vs.
LEM REYNOLDS.

This day comes the defendant in this case and takes exception to the ruling of the court,

on the ground that the national secretary failed to send a copy of the permit-law to the clerk of the court, and claims that the permits issued under the old law are good and valid, and he therefore prays an appeal to the next term of the district court to be holden at Rock Springs on the first Monday in July, 1877.

April term of county court.

BEN. KEMP,
Attorney on part of Defendant.

Also claims as follows:

1st. I do not believe the last legislature was a legal one.

2d. I do not believe the so-called permit-law now in force is the law that passed the legislature, if it was a legislature at all.

3d. It being unconstitutional under the third article of the bill of education.

By granting my request, I ever pray.

Yours, respectfully,

LEM REYNOLDS.

I do hereby certify that the above is true and correct, as will show on record in my office.
Given under my hand and seal of office this 8th day of January, 1878.
[SEAL.]
BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

COURT-ROOM, PANOLA COUNTY, CHICKASAW NATION,
January 8, 1878

To the Clerk of Panola County, Chickasaw Nation:

You are hereby commanded to turn over to the national treasurer of the Chickasaw Nation all moneys in your possession received by you for permits or otherwise, all orders to the contrary notwithstanding.

OVERTON LOVE,
District Judge, Chickasaw Nation.

I hereby certify that the above is a true and correct copy of the original now on file in my office.
Given under my hand and seal of office this January 8, 1878.
[SEAL.]
B. F. GREENWOOD,
District Clerk of Panola County, Chickasaw Nation.

The clerk of this court will issue the summons and the writ or injunction, in accordance with the prayer contained in the within petition of complainants, and hold all moneys collected by himself for permits under the act of October 17, 1876, subject to the order of the court.

July 2, 1877.

T. B. JOHNSTON,
District Judge, Chickasaw Nation.

I hereby certify that the above is a true and correct copy of the original now on file in this office.
Given under my hand and seal of office this January 8, 1878.
[SEAL.]
B. F. GREENWOOD,
District Clerk, Panola County, Chickasaw Nation.

APRIL 11, 1877.

DEAR SIR: I learn that the permit law is only confined to males, and not to females, unless her boys are 18 years old.

Mrs. Garrison is registered in my employ. Neither of her boys are 18 years old. Therefore, I send you her certificate, and you will please send me the $25 in return, as I had to borrow the money.

Very respectfully, yours,

SAM'L LOVE.

Mr. BEN. GREENWOOD.

N. B. If it is not too much trouble, send me a copy of the law.

I do hereby certify that the above is true and correct copy of the original now in my office.
Given under my hand and seal of office this 9th day of January, 1878.
[SEAL.]
BENJ. F. GREENWOOD,
Clerk of Panola County, Chickasaw Nation.

Petition to the supreme court, and its decision.

"An important question" on legal or illegal constitutionality of an act entitled "An act in regard to 'permit law' of the Chickasaw Nation," approved October 17, A. D. 1876, submitted to the honorable supreme court, spring term, 1877, now in session, for its decision; requested by all concerned.

1st. The last section of the law in question repealed the act of United States Congress in regard to foreigners coming into the Indian country, which the Chickasaw legislature have no authority to repeal by treaty with United States Government, and agreeable to the treaty of 1866, which was confirmed by the Chickasaws in November, 1866, and the Chickasaw convention engrafted in the constitution of the Chickasaw Nation, section 25 of article 4, legislative department, provides, the legislature shall conform to the treaty of 1866, pass all laws necessary to the requirements or said treaty, &c., which prohibits the Chickasaw legislature to pass any law inconsistent with said treaty or any acts of United States Congress, and agreeable to the treaty of 1855.

The United States Indian agent decided that there is no authority in the treaty stipulation with Indians to levy tax on the labor of United States citizens, &c.; as also the public education of the constitution, section 3, reads: "The legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvements, and such other means as shall be invariably appropriated to the support of general education throughout this nation."

Also section 20 of general provision reads: "All rights and powers not herein granted or expressed are reserved unto the people, and any law that may be passed contrary to the provision of this constitution shall be null and void."

The Chickasaw legislature are governed by the above clause of the treaty and constitution to legislate.

It seemed that the Chickasaw legislature enacted at its last session the "permit law," contrary to the provision of their constitution, all of which is respectfully submitted for your honorable decision, to satisfy all concerned as to their interest, so that prosperity and harmony may prevail throughout this nation, which is highly necessary.

With great regard, we are your humble servants,

WM. P. BROWN, *Citizen.*
EASTMAN HARNEY, *Citizen.*

The above-written is a copy of "a petition praying the decision of supreme court on constitutionality of the permit law approved October 17, 1876, filed in clerk's office of the supreme court this 3d day of April, A. D. 1877.

I. A. BURRIS,
Clerk Supreme Court Chickasaw Nation.

I do hereby certify that the above is a true copy of the original now on file in the clerk's office of the supreme court, Chickasaw Nation.

Given under my hand this the 15th day of June, A. D. 1877.

I. A. BURRIS,
Supreme Clerk.

The following is the decision of the supreme court in regard to the above petition:

Whereas an important question on legal or illegal constitutionality of an act entitled "An act in regard to permit law of the Chickasaw Nation," approved October 17, A. D. 1876, submitted to the honorable supreme court, spring term, 1877, now in session, for its decision, requested by all concerned.

After having been submitted to the supreme court now in session for its final decision, whether this "permit law" in question is constitutional or unconstitutional, after a mature deliberation upon the said question, we, the supreme judges of the Chickasaw Nation, do unanimously decide that it is constitutional.

Given under our hands this the 8th day of April, 1877.

SAMUEL LOVE,
Chief Justice Supreme Court Chickasaw Nation.

his
ABIJAH + COLBERT,
mark.

his
WILLIAM + HAWKINS,
mark.
Associate Judges.

Attest:
I. A. BURRIS,
Supreme Clerk, Chickasaw Nation.

I do hereby certify that the above is a true copy of the original now filed in my office. Given under my hand this the 15th day of June, A. D. 1877.

I. A. BURRIS,
Supreme Clerk, Chickasaw Nation.

CHICKASAW NATION, INDIAN TERRITORY,
January, 1878.

SIR: The undersigned citizens of the Chickasaw Nation respectfully represent that under the so-called general permit law of the Chickasaw Nation, approved by the governor, B. F Overton, October 17, 1876, all citizens of the United States, and of the States and Territories thereof, who desire to be employed within the limits of the Chickasaw Nation, are required to enter into a contract with some citizen of said nation, and pay to the county clerk of the county where such citizen resides, the sum of $25, and such citizen of the Chickasaw Nation is required within fifteen days to report such contract to the said clerk, and if any citizen of the Chickasaw Nation shall employ any non-citizen for more than fifteen days without said tax having been paid, such citizen of the * * * subject to a fine of $25 to be collected as other fines are collected; that we are informed and believe said pretended act of the legislature, in the form it was approved and promulgated, never passed that body, but the act which did was changed so as to make it apply to citizens of the States and Territories of the United States, instead of non-citizens of said States and Territories; that nevertheless, the governor of the Chickasaw Nation causes this spurious act to be certified by the national secretary and promulgated as a law of the Chickasaw Nation; that (he) being apprehensive, it seems, the officers of the nation would not or could not enforce the pretended act of the legislature, the governor proceeded to call out the militia or a select portion thereof, for the purpose of enforcing the so-called law; this before any resistance had been offered to its enforcement in the ordinary way, and it being still apprehensive that his militia could not or would not enforce it, he applied as we are informed and believe, to the commanding officer of the United States troops at Fort Sill, for the assistance of soldiers under the pretext that this end was required to expel from the limits of the Chickasaw Nation, desperadoes, thieves, and murderers.

Having received a detachment of United States cavalry, who were instructed to report to and carry out the orders of the Chickasaw governor, he proceeded with them and his militia, to collect the tax, in many cases raising the money in person, notwithstanding the law *under which he pretended to act requires said payment to be made to clerk of the county court.* Moreover, we are informed and believe he used a large amount received as tax due the nation, without warrant of law, to defray his expenses of his raid upon peaceful and industrious citizens of the United States, who are quietly engaged in the cultivation of the soil under the employment of the citizens of this nation.

That some time since the United States Indian agent decided said permit law to be invalid, and Governor Overton appealed to the Department of the Interior, thus fully admitting his jurisdiction over the subject, and succeeded in obtaining a decision setting aside that of the Indian agent, but subsequently the question of the validity of the so-called permit law having again been brought before the honorable Secretary, he rescinded his former decision, and after full consideration declared the law contrary to the law and treaties of the United States, and therefore *null and void.*

Again the governor and the delegation from the Chickasaw Nation at the city of Washington, appealed to the department, and it is understood they failed to obtain a reversal of the Secretary's last decision. So it appears the late so-called permit law of the Chickasaw Nation, as declared by the Department of the Interior, is null and void. This decision was communicated to Governor Overton by the resident United States Indian agent, acting under orders of the Commissioner of Indian Affairs, with the request he would submit the same to the legislature then in session, and expressing the hope the legislature would take necessary measures to have the taxes illegally collected returned to the proper parties. Instead of complying with this request, we learn the governor said, if he, the governor, would be backed with their influence and money, he would execute the permit law at all hazards; that if he could not collect it off citizens of the United States, their employés, citizens of the nation to pay it or be fined; thus he would collect by indirection to enforce the tax, the decision of the Secretary to the contrary notwithstanding, and in defiance of the forty-third article of the treaty of 1866, which excepts "teachers, mechanics, and persons skilled in agriculture," while employed by citizens in the nations (Choctaws and Chickasaws) from being classified as intruders, subject to removal by the United States Indian agent, and really and truly amounts to a permit for such persons when so employed, to reside in the Choctaw and Chickasaw Nations, given and guaranteed by three parties to said treaty, viz, United States, by the Choctaw and the Chickasaw Nations.

Finally, the undersigned are informed and believe, and in fact it is notorious, the judge of the circuit court of the Chickasaw Nation, recently held at Rock Springs, Panola County, charged the grand jury that it was their duty to enforce the so-called permit law of the Chickasaw Nation, ignoring the decision of the department, and openly placing the courts of the Chickasaw Nation in collision with the United States Government.

We, the undersigned, regard this charge as an open declaration that the citizens of the

Chickasaw Nation are to be fined, and failing to pay the fine, to be imprisoned, not for any offense or crime, but for exercising a treaty right to employ "teachers, mechanics, and persons skilled in agriculture," and for his disregarding the law declared by the proper authority of the United States to be null and void.

The question now presents itself is this: Shall the citizens of the Chickasaw Nation be subject for fines and penalties for violating no law? Under these circumstances, and being peaceable, law-abiding citizens, and to avoid the appearance of resistance to the constituted authorities of the Chickasaw Nation, and having otherwise no legal redress, inasmuch as the supreme court of the Chickasaw Nation, which by the constitution is a court of appeals only, without any case before it, went out of the way, just before Governor Overton commenced his raid last spring, to declare the permit law constitutional, thereby cutting off from all legal redress, and inasmuch as the courts of the United States have jurisdiction over questions arising under treaties of the United States and laws thereof, we as Indians has no status in these courts, because we are neither citizens of the United States or of any State or Territory of the United States, nor foreigners.

We therefore appeal to the Government of the United States to protect us in our rights under treaties with it, and shield us from wrong and oppression by the officials of our own government, under forms of law.

For the purpose of presenting this memorial, and laying before the United States Government all the facts, with court records, &c., connected with the oppression to which we are subjected, we have appointed and deputed our fellow-citizen, Col. Lem Reynolds, as our representative, and trust he will be received as such, and permitted to act as our special agent to the Government of the United States, to represent the oppressed citizens of the Chickasaw Nation. Colonel Reynolds will ask an early decisive action on the part of our guardian, the Government of the United States, and we hope it will be made without delay, inasmuch as the agricultural interests of the country will suffer greatly unless speedily re enforced by labor in the fields, or many will lay idle and the agricultural interest of the nation greatly impaired.

All of which is respectfully submitted.

GEO. W. HARKINS.	JNO. J. CRAVENS.	D. O. FISHER.
J. D. HARRIS.	THOS. S. BARKER.	CORNELIUS MCGEE
EASTMAN HARNEY.	B. F. GREENWOOD.	ROBERT COLBERT.
W. H. BOURLAND.	JNO. M. WEBB.	D. W. COLBERT.
S. D. JAMES.	ALLEN LATTA.	JAMES CHEADLE.
G. D. JAMES.	JOEL KEMP.	BENJ. KENNY.
JAMES DULIN.	JACKSON KEMP.	R. C. WIGGS.
R. M. HARRIS.	MCKINNEY COLBERT.	ABRAM GURNZY.
WM. JACKSON.	JOHN MASHBURN.	CHARLES SHECO.
CHAS. STEWART.	N. W. RIDER.	H. C. HAMBLIN.
WM. MOORE.	MCKINNEY COBB.	WM. R. GEORGE.
NOAH MCGILL.	J. J. SELF.	A. J. LEWIS.
JAMES HARKINS.	EASTMAN JAMES.	JAMES A. REYNOLDS.
ANDERSON DAVIS.	C. P. HARRIS.	MARION DAVIS.
JOHN S. HOWELL.	J. C. MCCOY.	SIMON KEMP.
D. B. COTTEN.	G. G. GARDNER.	A. C. KEMP.
BENJ. ROBINSON.	A. T. MCKINNEY.	DAVE KEMP.

To the Hon. the COMMISSIONER OF INDIAN AFFAIRS,
Department of the Interior, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 3, 1877.

SIR: Referring to your communication of the 18th June last, inclosing letter from Dr. T. F. Ealy, teacher of the freedmen school at Fort Arbuckle, complaining of the attempt of Governor Overton, of the Chickasaw Nation, to collect from him a tax of $25 under the so-called permit law of said nation, I have to say that the question of the validity of said law has been submitted to the honorable the Secretary of the Interior, who, on the 27th ultimo, rendered his decision to the effect that the same is null and void, and that all proceedings under it must cease.

He also decides that neither the Choctaws nor Chickasaws have any authority to pass or enforce a law upon the subject of taxation except under the provisions of article 47 of the treaty of April 28, 1866 (14 Stats., 769), in which article the approval of the President of the United States is required in every case.

A copy of said decision is herewith inclosed, and you will at once notify the Choctaw and Chickasaw Nations of its purport, and inform them that the department expects their prompt and strict compliance therewith.

Very respectfully,

J. Q. SMITH, *Commissioner.*

S. W. MARSTON,
United States Indian Agent, Muscogee, Indian Territory.

EXHIBIT No. 31.

OFFICE INDIAN AFFAIRS,
UNITED STATES UNION INDIAN AGENCY,
Muscogee, Ind. T., February 6, 1878.

SIR: I have the honor to transmit for your information and action a letter from Mrs. S. E. Collins, an Indian of the Chickasaw tribe, relative to the so-called permit law of that nation.

The fifth section of that law imposes a fine of $25 upon every citizen who employs a non-citizen for a greater period than fifteen days without procuring a permit, for which the non citizen has to pay the twenty-five dollars or be removed from the nation. Mrs. Collins's letter gives a very correct idea of the effect and working of the said law. Many of the citizens are unable to pay the fine; others are unwilling to do so; some did so, and the money paid to the county judges. Injunctions were filed to prevent those from paying it to the treasurer until the decision of the Hon. Secretary of the Interior was made known, and the money returned to those collected from. This decision of the Hon. Secretary was published with letter L, September 3, 1877, of Commissioner J. Q. Smith, in which he directed to "at once notify the Choctaw and Chickasaw Nations of its purport, and inform them that the department expects their prompt compliance therewith."

This office forwarded copies of said decision and letter to Gov. B. F. Overton, to be communicated to the Chickasaw legislature, then in session, for its action.

The governor seems to have failed to do so, or to recommend the repeal of the said so-called permit law, but stated publicly, "at an informal meeting outside of legislative hours, that he would pay no attention to the late Secretary of the Interior order, and that if the legislature would back him with the means and influence, he would enforce and collect the $25 permit tax, and asked that the permit law remain as it was." See memorial of certain members of the Chickasaw legislature and other prominent men, of October 29, 1877, transmitted to you under date of November 8, 1877.

The farming season is now upon the people; some of them had already commenced preparation for an early planting, but owing to the threat of enforcing the said permit law, some are deterred from employing labor on account of the penalty for so doing. Citizens of the United States do not desire to remain in the country and be subject to what they consider, and is, an unconstitutional, unjust, and illegal tax, when they know their labor is an advantage to those employing them as well as to themselves. Many fields must necessarily remain uncultivated and in consequence thereof a scarcity of breadstuffs the coming season, unless some assurance is given by the Chickasaw farmers and their employés that the decision referred to on the part of the honorable Secretary of the Interior will be enforced and carried out. And as a successful crop depends upon an early planting, I would respectfully ask, for the sake of the prosperity, comfort, and advancement of the industrious people of the Chickasaw Nation engaged in agricultural and pastoral pursuits, that this office be instructed to give these people the assurance so much needed, and at as early a day as practicable.

Very respectfully, your obedient servant,

S. W. MARSTON,
United States Indian Agent.

Hon. E. A. HAYT,
Commissioner Indian Affairs, Washington, D. C.

STONEWALL, CHICKASAW NATION,
January 15, 1878.

SIR: I shall now write a few lines to you to-night on a subject of "permit law." You will please to inform me in a plain English writing in replying to my questions. Well, sir, I have seen the advertisement in the Star Vindicator that the permit law of the said Chickasaw Nation was null and void, and by the meaning of these two words, null and void, in which I understand from the word "null" something that has no force or meaning. But Governor Overton have not decided on the "permit fee"; he wants to make all the renters and owners of the land pay. Our district judge, Love, has already said that all those that have no permit for their renters, he shall make the owner of the land pay $50. Can't you put a stop to this permit-fee question? It is impossible for us poor folks to get any money in this country to pay such fee.

There is good many of my native neighbors have no corn right now. If they had renters, why, of course, they would have had a plenty corn to bread them and feed to their stocks, but here they have no way to get white renters. Only those that had white folks, renters, have some breadstuff. We have a renter, name of E. Smoot, a United States citizen; he is of a true and honest man; he shall be our farmer for twelve months. Will you be so kind as to grant me a permit for said farmer Smoot? I am a woman that requesting you of this question. My husband is living, but he is a preacher; he has to go to his appointment,

and, therefore, he cannot make no living for his family. I cannot farm; so I am obliged to have a renter. You will please to aid me in this. I had been thinking that the permit question was done away, but it is getting up again.

I will now soon close my writing. Excuse all my mistakes. I will now await for an answer to my letter as soon as possible before the 28th instant. I and my husband are Chickasaw Indians; no white about but taken for white folks.

I am, respectfully, yours,

S. E. COLLINS.

P. S.—DEAR SIR: After writing, I think I had forgot to mention Mr. J. A. Fox, our farmer last year. After all you had signed your name to his permit the Governor Overton's militia came and made him pay again. I hope the permit which you would grant me would not be the same. Will you be so kind as to let me have a good permit for my renter, E. Smoot? He is true and honest, and local preacher of M. E. Church, South.

I remain, yours, truly,

S. E. COLLINS.

To the Hon. Agent MARSTON,
Muscogee, Creek Nation.

EXHIBIT No. 32.

TISHOMINGO, CHICKASAW NATION,
January, 23, 1878.

DEAR SIR: The petition of Isaac Butterworth was received by Governor Overton, and he requested me to say that Mr. Butterworth will have to come before some judge of our courts and make oath to the amount of capital he proposes to invest in stock, and pay one per cent. on the amount invested to the nation "the tax required of licensed traders," and then he can make applications to the county clerk of the county in which he wishes to trade, and upon the payment of $25 for each permit the clerk will issue them.

Very respectfully,

ROBT. L. BOYD,
National Secretary, Chickasaw Nation.

Hon. L. C. TRUE,
Cheopta, Labette County, Kansas.

EXHIBIT No. 33.

HOUSE OF REPRESENTATIVES,
Washington, D. C. March 4, 1878.

DEAR SIR: The inclosed communication was sent to me to present to your department, and ask that early consideration be given it. This I do, but am not sufficiently familiar with the rulings of your department to volunteer any suggestions touching it.

I will venture to say however, that it does appear to me that many things are being done by the Indian authorities, doubtless with a view to prevent the territorializing of their country, which to my mind, if not already convinced, would be convincing proof of the necessity of an act creating a Territorial government for that country.

Your obedient servant,

JORDAN E. CRAVENS.

Hon. CARL SCHURZ,
Secretary of the Interior.

FORT SMITH, ARK., *February* 26, 1878.

SIR: I write to you in connection with the removal of white men from the Indian country who had leased land from Indians and performed their part of the contract, but whom the Indian authorities now wish to remove from the country. I wrote to the United States Indian agent at Muscogee, who in reply used the following language: "Referring to yours of the 31st ultimo, I have to refer you to United States Statutes Revised, section 2116, as to penalty of leasing land from Indians. * * * From their own statement they seem to have went beyond United States law." In reply I wrote the following communication to the agent:

"S. W. MARSTON, esq., *United States Indian Agent:*

"In your letter of February 21, you refer me to section 2116 of the United States Revised Statutes as to the penalty of leasing land from Indians. I have examined the section referred to, and find that it does not refer to individuals. You will perceive on further examination that the section referred to relates to the selling, leasing, &c., of land by the Indian nations or tribes. It has no reference whatsoever to individuals, and there is no prohibition in the United States Statutes against Indians, I mean individual Indians, leasing lands to white men. The leasing of land therefore is not in violation of any law of the United States, neither was it at the time this lease was made, in violation of any law of the Choctaw country. To be sure there was a law forbidding Indians (Choctaws) to alienate, but there was no law forbidding them to lease; on the contrary, it was the law of the country, recognized by all. Nothing has been more common in the past and it was not until last October, 1877, that the Choctaw authorities made any change in the law. At that session of the Choctaw council, a law was passed forbidding Indians to make leases, but in that law the validity of existing leases is recognized, and lessors are required before they can terminate the leases, to pay the lessees the value of their improvements. But we apprehend it did not require this recognition of their validity by the Choctaw authorities to make them good in law, because these leases were taken in good faith by the lessees, who, as I have said, were not forbidden to do so, either by the laws of the United States, or the laws of the Choctaw Nation. As the right to lease was not forbidden, either by the United States laws or the Choctaw Nation when this particular lease was made, it was entirely valid and binding on all parties; and the Government of the United States would not permit the Choctaw authorities to declare it invalid, had they attempted to do so; it would certainly have protected the vested rights of its citizens entered into in good faith and not in violation of any existing law. But the Choctaw Nation recognize the validity and binding obligation of these leases so made, and there is clearly no reason why the United States authorities should interfere in this case to pronounce them void. Your predecessor in office recognized the validity of these leases in at least two cases here. One was the case of Reynolds and Freeman. Reynolds, an Indian, had leased land to Freeman, a white man, who was to make certain improvements. The improvements being made, Reynolds called upon the agent to remove Freeman, but after coming here and investigating the matter, he decided in favor of Freeman. His ruling was the same in the case of McCarty, and I am satisfied the rulings were correct and strictly in accordance with the late rulings of the Secretary of the Interior.

"The Secretary says that the Indian authorities have no right to remove white men; that this is a matter which in every instance must be referred to the United States agent. Then he goes on and decides in what instances it is the duty of the agent to interfere and have them removed. And further on he enumerates the cases when the agent must not interfere, and these are in the case of teachers, mechanics, and skilled agriculturists, but on the contrary, he must see that the rights of these are protected. Now, these men, Warrington and Casey, leased from the administrator when leases were not forbidden. They improved about 150 acres of land and undertook the payment of a debt against the estate. They have now proceeded to prepare their land for a crop, have all their effects on the place, corn, cattle, horses, mules, hogs, &c., and in view of the fact that they have a good right to occupy this place, it would be a great hardship as well as injustice that they should now be dispossessed. The court will meet on March 4, and will then render judgment in this cause. These men are honest and industrious, and I can refer you to every man in Fort Smith who knows them. I trust you will not fail to communicate with the Indian authorities, and if you are not satisfied with the case as made, please refer the matter to the Secretary of the Interior, to whom I will send a copy of this communication."

The Indian authorities here claim the right to eject these men, and the sheriff has been heard to say he will remove them very soon of the county-court acts. I trust you will give this matter your early consideration and communicate with the agent here.

Very respectfully,

P. J. M. McGEERY,
Attorney at Law.

Hon. CARL SCHURZ,
Secretary of the Interior.

EXHIBIT NO. 34.

WASHINGTON, D. C., *March* 1, 1878.

SIR: I have been sent to Washington by the farmers of the Chickasaw Nation to ascertain if the Department of the Interior would not afford them relief from the exorbitant tax on labor to which they are now subjected by the Chickasaw legislature, in plain defiance of the forty-third article of the treaty of Choctaws and Chickasaws, 1866, and of the official decision of the Secretary of the Interior of date the 28th of August, 1877.

I wish to know, in behalf of thousands of industrious farmers in my nation, whether the

department will afford us any relief. If it does not, we are left the alternative of allowing our farms to go to waste, or of defending what we know to be our rights the best we can.

Very respectfully,

LEM REYNOLDS,
Delegate from the Farmers of the Chickasaw Nation.

Hon. A. H. GARLAND,
United States Senator.

[Indorsement.]

UNITED STATES SENATE, *March* 4, 1878.

Hon. SECRETARY OF THE INTERIOR:

Please look into this matter and give me such information as you can. I do not know that I am prepared to express an opinion about it, but I would be glad to have your suggestions. I think the matter worthy of an examination.

Truly yours,

A. H. GARLAND.

EXHIBIT No. 35.

RED RIVER VALLEY,
CHICKASAW NATION, INDIAN TERRITORY,
March 4, 1878.

DEAR SIR: I address you this letter on a very important question that is agitating the public mind in these parts. Are you in sympathy with the $25 permit that is being enforced in this nation, and have you given it your hearty approval and encouragement?

This is a question of very grave importance, especially to those who do not enjoy even the necessaries of life. It is in behalf and at the earnest request of these that I write you. His excellency Gov. B. F. Overton says he will collect the permit ($25) or sink the nation. Will you, Mr. Schurz, co-operate with the governor in collecting this unjust permit? Will you give him access to the Federal troops to use them at his discretion in forcing $25 out of the poor who are eking out a scanty sustenance? With these it actually is impossible. Now, what is to be done with these? It is really heart-rending to see this criminal waste of the people's money, taken by force at the point of the bayonet; desolate homes, aching hearts, weeping children, heart-broken mothers deprived of their only home. If you could have been here last May and witnessed the proceedings of Overton & Co., you surely would have been moved to compassion. Grim, defiant, short spoken, not a morsel of leniency, was the general make-up of the leader. Many—yes, very many—kegs of whisky were emptied. I do not wish you to understand that I am trying to belittle any one, but what I have said I have said, and it can be substantiated. There is getting quite an uproar here about the permits, and various rumors are on the wing. I have been asked by numerous individuals to write to you for the facts, as your decision will be taken as final. Your reply and decision will be waited for with much anxiety by a host of people, as it will seal our doom for weal or woe, and we have resolved to abide by it.

I have no doubt, Mr. Schurz, but what you have been bored considerably with letters of this kind, but remember there have been none received from you in these parts. Please do not pass this by, but answer in as satisfactory a manner as your inclination will permit. I would here say that the official reports you receive about the country needing purging, &c., as an excuse for the permit, is very much exaggerated. It is for theft and nothing else, as the officials only are benefited. Hoping that the above will meet with your favorable consideration, and that you will answer this and relieve the minds of many,

I am, truly, your obedient servant,

PETER B. ARTHUR,
Marysville, Cooke County, Texas.

Hon. CARL SCHURZ,
Secretary of the Interior, Washington, D. C.

A native of Huntington, W. Va., and a four-year resident of Chamois, Mo.

Any documents giving light will be thankfully received and paid for.

There are gigantic frauds or swindling concerns in daily operation in these parts, The government is being swindled enormously. I will not mention anything, as my life would be endangered was it made known.

Please hand this to the United States secret service, and if they wish to communicate with me they must do it in cipher, as I would not do it otherwise. If they will grant me pro-

tection, I will tell all I know. Should you wish to communicate with me, write in cipher thus, 13, 14, 15, 16,
A, B, C, D, E, &c.
Can furnish good reference.
Respectfully,

PETER B. ARTHUR,
Formerly of Huntington, W. Va.

EXHIBIT No. 36.

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 2, 1878.

MY DEAR SIR: I learn from Colonel Boudinot that some weeks ago you addressed a letter to the Secretary of the Interior, calling his attention to the fact that the authorities of the Chickasaw Nation had treated with contempt and defiance his decision, made officially last August, that the law passed by the Chickasaw council, taxing white labor $25 per annum, was null and void.

It is a fact that Governor Overton, of the Chickasaw Nation, has treated with contempt the said decision of the Secretary, and boasts that he will drive every white laborer out of the nation who refuses to pay the exorbitant tax.

I come here at the request of many industrious farmers of the Chickasaw Nation, who are driven to the alternative of allowing their farms to go to waste or defending the order of the Secretary, if he will not vindicate it himself. Will you be so kind as to ascertain officially from the Secretary if he intends to take any steps to enforce his order and protect the farmers of the Chickasaw Nation from this unjust tax?

Very respectfully,

JEM REYNOLDS.

Hon. D. W. VOORHEES.

[Indorsement.]

I respectfully refer this letter to the honorable Secretary of the Interior, with the request that he will render me such information as he may find consistent with his sense of public duty.

D. W. VOORHEES.

EXHIBIT No. 37.

BURNEYVILLE, CHICKASAW NATION,
March 17, 1878,

SIR: We, the undersigned, citizens of the United States, and residents of the Chickasaw Nation, write to you in relation to the permit law now in force in this nation; whether it is lawful or not for the officers of this nation to tax non-residents twenty-five dollars per annum for the privilege of living in this nation.

We have been invited and persuaded to come here by the natives of this place. We have improved their lands, built their houses, and made their heretofore-uncultivated lands a fertile country. The majority of us have not the money to pay this permit fee, and when the collector comes around and we fail to pay the required amount, we are forced to leave everything, and are driven out of the country; our time, labor, and money spent in improving is all lost.

There are three or four thousand non-residents in this nation precisely in the same situation as your correspondents, and we earnestly request that you will favor us with a reply in reference to this matter, whether it is legal or otherwise for us to be taxed twenty-five dollars per annum for the privilege of living in this nation.

By so doing you will oblige many citizens.

W. F. CORMISH,
Burneyville, Chickasaw Nation, Indian Territory, via Civil's Bend.

To the SECRETARY OF THE INTERIOR.

EXHIBIT No. 38.

FORT SILL, INDIAN TERRITORY,
March 29, 1878.

SIR: Having rented a farm in the Chickasaw Nation, and having most of my crop in, I am now informed that there is a tax of $25 for each one of us that works on the farm, and that if we do not pay the above amount we are liable to be taken out of the Territory. It was done to a number of parties, I am informed, last year. Please inform me if any one in the nation has a right to eject us from our home when we are paying rent to a citizen the nation.

I have made the above inquiry not only for myself, but for other renters of farms, and their request.

Yours, &c.,

WM. WILLIAMS, JR.,
Fort Sill, Indian Territory.

Hon. C. SCHURZ,
Secretary of the Interior.

EXHIBIT No. 39.

COLBERT'S STATION, CHICKASAW NATION,
April 20, 1878.

HONORABLE SIR: With your permission, would like to ask a question in regard to the permit law in the Chickasaw Nation. I am a citizen of the United States, residing in the Territory, having a flouring-mill rented at Colbert's Station, and also my own miller. Can Gov. B. F. Overton compel me to pay the $25 tax for myself and engineer? I have resided in the country for five or six years.

An answer will oblige,

Yours, very respectfully,

JOHN MALCOLM.

To the SECRETARY OF THE INTERIOR.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 75.

LETTER

FROM

THE SECRETARY OF WAR,

RECOMMENDING

An appropriation for the completion of the development of the water-power at the Rock Island Arsenal.

MAY 10, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, May 9, 1878.

The Secretary of War has the honor to transmit to the House of Representatives copy of a communication from Charles Atkinson, president of the Moline Water-Power Company, dated the 22d ultimo, with report thereon from the Chief of Ordnance, who renews his previous recommendation that Congress be asked to appropriate $157,350 to complete the development of the water-power at the Rock Island arsenal.

The recommendation of the Chief of Ordnance is approved, and an appropriation of the amount stated is respectfully requested.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *United States Senate.*

OFFICE OF THE MOLINE WATER-POWER COMPANY,
Moline, Ill., April 22, 1878.

SIR: The concluding sentence of the report of the commission appointed by yourself to examine into the subject-matter of the water-power contracts existing between this company and the United States Government, after reciting what the company is presumed to have expected, and the natural disappointment that these expectations have not been fully realized, goes on with the idea that all the necessary development will be made, if the government should use water-power instead of steam; but suggests no remedy for the company if government should use steam instead of water-power, and which, judging from the views of Mr. Randall in discussing the matter in Congress June 24, 1876 (see Congressional Record, page 38), and from the extensive and permanent preparations now being made for using steam-power at the arsenal shops, seems not unlikely or improbable.

But whatever may be the present policy or determination of government as to the kind of power to be used at its shops on Rock Island, this one thing is true, that the contracts entered into between this

company and the United States Government pertaining to water-power were based on the clearly-defined and distinct understanding and representation, running through all the talks and discussions pending their final execution, that government would use water-power for its shops to be built, and, without unnecessary delay, would develop and would also maintain the power therefor. This it has not done, and the delay has already been seriously damaging to the interests of this company, and will be increasingly so if delay is continued.

In representing its interests I would respectfully call your attention to the matter at this time, as it will soon come up before the committee for consideration, and would ask your official aid toward a proper solution of the questions at issue; and in doing this, I deem it not out of place to suggest that government ought either to fulfill its obligations, agreements, and understandings in this matter, or consent to some such fair arrangements and adjustments concerning it as will enable the company to go on and put the water-power into proper condition for their use. I would be glad to hear from you on the subject.

Very respectfully, your obedient servant,

CHAS. ATKINSON.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, May 2, 1878.

SIR: I have the honor to return the letter from Mr. Charles Atkinson, of the Moline Water-Power Company, to the Secretary of War, in regard to an appropriation for the Moline Water-Power, and to report as follows:

Herewith I inclose Ex. Doc. 21, House of Representatives, Forty-fifth Congress, first session, being the report of the commission referred to by Mr. Atkinson; and also a printed letter from the Secretary of War to the House of Representatives, inclosing a letter from this office, and another from the commanding officer of the Rock Island arsenal, all on this subject.

I will add to what is to be found in these reports, that about three years ago, on the 6th of May, 1875, the commanding officer of the Rock Island arsenal, in a report to this office, said:

> I certainly believe that the obligations of the United States set forth in these papers have been thus far properly discharged, and somewhat liberally discharged, in the benefit conferred upon the Moline Water-Power Company, and that you should not feel that injustice has been done to this company by the United States.
>
> The government has certainly bound itself to develop and maintain the water-power. What this development and maintenance shall be is not exactly set forth, and has caused and probably always will cause discussion, because only one party to the benefits to be obtained has to expend the money for them.
>
> * * * * * * *
>
> The water-power in its present condition is certainly defective. I first noticed the defect three years ago last fall; have had occasion to observe it every fall and winter since that time, and have referred to it in my annual reports.
>
> 1st. At extreme low water the depth of water at the mouth of the pool is too little, and enough water cannot get into the pool. Generally if more than about one-third of the estimated power of the water-power is used at such times, the pool is "drawn down" too low. That is on account of the small cross-section of water at the mouth of the pool; the requisite amount of water cannot get into the pool without increased velocity because the amount of water passing in is the product of cross-section into velocity. Velocity can only be obtained by consumption of *head*, and whatever head

is consumed at this point must be deducted from head at the dams. The extreme case would be when all the head is consumed in getting velocity, thereby converting the pool into a running stream, leaving *no* head at the dams and *no* water-power.

2d. The depth of water at the mouth of the pool is being constantly diminished by deposits. The current along the left bank of the river makes a curve at the mouth of the pool and passes around the head of the wing-dam as shown on the map. The water which passes into the pool at once becomes (comparatively) still water, and begins to deposit its sediment. The deposit is greater when the water first stops at the mouth of the pool, and should form a bar there along the lower border of the currents shown by the map. This is what actually takes place. The deposit is then less and less as the amount of sediment in the water diminishes while the water moves slowly toward the dams, but there is some deposit all the way.

3d. When very low water lasts until winter, the extreme cold of this climate may freeze nearly *all* the water at the mouth of the pool and form an effectual dam so that no water may get into the pool, and there will be no water-power. In the winter of 1872–3 ice formed in the river to a depth of 40 inches. This has occurred during the past two winters, though the dam was partly formed of slush and floating ice, lodging under and upon the solid cake lying in the pool.

To what extent the development and maintenance is to go on, is for Congress to determine, and upon appropriations made by Congress depends the action of this department. But certainly the development is not complete as long as the deposit at the head of the pool "dams the water out of the pool," for without a certain head of water there can be no power, and the permanent works erected there to utilize it are of no avail. As it stands, it is an unfinished work. Money should be appropriated to make a channel through the mud and rock for the passage of sufficient water into the pool, which channel can afterwards be readily and economically kept clear of any deposit that might impede the flow of water.

I have, therefore, the honor to renew my recommendation, heretofore made, that Congress be asked to appropriate $157,350, to complete the development of the water-power at the Rock Island arsenal.

Very respectfully, your obedient servant,

S. V. BENÉT,
Brigadier-General, Chief of Ordnance.

The honorable the SECRETARY OF WAR.

[Forty-fifth Congress, first session, House of Representatives. Ex. Doc. No. 21.]

Letter from the Secretary of War, transmitting the report of the commissioners appointed to examine the Moline water-power.

November 23, 1877.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT, *November* 20, 1877.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives a copy of the report of the commission appointed in accordance with the joint resolution of March 3, 1877 (19 Stat., p. 410), to examine into the matter of contracts made by and between the United States and the Moline Water-Power Company as to the water-power at Moline, Ill., and the development and maintenance of the same.

GEO. W. MCCRARY,
Secretary of War.

To the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

ARMY BUILDING,
New York, June 13, 1877.

SIR: The commission designated by paragraph 6 of Special Orders No. 72, of April 5, 1877, issued in compliance with the joint resolution of Congress approved March 3, 1877, authorizing the Secretary of War to appoint a commission to examine into the matter of contracts made by and between the United States and the Moline Water-

Power Company as to the water-power at Moline, Ill., having performed the duty above specified, has the honor to submit the following report thereon.

The commission first met in Washington as directed in the order, and after examining certain maps and documents relating to contracts between the United States and the Moline Water-Power Company which were laid before it by the acting Chief of Ordnance, and an informal discussion of the subject, adjourned to meet at Rock Island arsenal, Ill., on May 4, 1877. Meeting at the arsenal in pursuance of this adjournment, the commission continued in session from day to day until the evening of the 10th of May, during which time all the contracts and the correspondence upon the subject, as well as the maps and plans relating to the work, were thoroughly examined, the works themselves visited, and conferences held with the president of the Moline Water-Power Company and several of the prominent manufacturers and mill-owners interested in the water-power improvement.

The history of the development of the water-power at Rock Island may be briefly stated as follows: In February, 1837, the legislature of Illinois granted to David B. Sears and associates a charter to build a dam across the "slough" to Rock Island, which charter was extended two years later, and the dam was built in 1841–'42 and two mills put up on the Moline side. This water-power was occupied by Sears and associates for several years, but in 1851 it passed by sheriff's deeds to Pitts, Gilbert & Pitts, who in 1855 organized a company under a new charter. In 1859 this company issued a quantity of bonds to parties in Syracuse, N. Y., in order to raise money for repairs and improvement of their works, which not being paid, the property passed by sheriff's deed, in April, 1864, to H. K. Whyte, jr., who held as trustee for himself and associates.

The question of the use by the government of the water-power which might be developed, both between the island and the Moline shore and between the island and Benham's Island, as a motive-power for driving machinery in the public shops to be erected on the island seems to have been first brought up prominently in November, 1865, as appears by a letter from General Rodman to the Chief of Ordnance, dated the 7th of that month. (Appendix V.) On the 18th of the same month General Rodman, in a letter to P. R. Reed, the agent of the then water-power company, presents certain questions looking toward an arrangement by which the United States should have the use of one-half the water-power developed by the company's dam. (Appendix VII.)

Previously to this time negotiations had been entered into with the owners of the water-power by Charles Atkinson and associates for the purchase of the property, and a charter was obtained by them, under the name and style of the Moline Water Company, in February, 1865; but the company does not seem to have been organized and the property purchased until December of that year, and after it became known that there was a serious intention entertained of using this power for driving the machinery in the government shops.

It should be remembered that neither this nor the previous charters did or could give any legal right to abut a dam upon the island of Rock Island, or to use the west half of the slough as a pool, without the consent of the United States Government, in which was vested the ownership of the adjacent shore of the island. The existence of the water-power from the time of the construction of the first dam to the date of the signing of the first contract with the government in 1867 was dependent upon the pleasure of the latter. Hence the contract is to be considered as a necessary preliminary to the securing by the company of any legal right to a water-power practically useful.

The commission appointed under the acts of Congress approved April 19, 1864, and June 27, 1866, consisting of Maj. Gen. J. M. Schofield and Messrs. James Barnes and Selden M. Church, to ascertain the true value of the land on Rock Island taken possession of by the War Department, and the compensation due each claimant, reported under date of January 24, 1867 (Appendix X), that it found it impracticable to determine as a separate question the damage sustained by the Moline Water-Power Company in the taking possession by the United States of their one-half of the water-power, because of the inseparable character of the joint interest of the United States and the company; but recommended for adoption by the War Department the basis of an agreement with the company which they presented for the settlement of all questions pending between that company and the United States. The only conditions in this proposed agreement which have relation to the present condition of the subject are as follows:

"1. The Moline Water-Power Company to convey to the United States the fee of the entire Moline water-power, and also to grant to the United States the unrestricted use in perpetuity, without charge, of so much of the bed of the river not already belonging to the United States as may be covered by the pool and wall necessary to develop the water-power, and ten feet outside of said wall, together with the right of access thereto from the Illinois shore at all times for the purpose of constructing or of repairing said wall.

"2. The government to develop and maintain the power, so far as it can be done

with the money heretofore appropriated and that which may hereafter be appropriated by Congress for that purpose.

"3. The Moline Water-Power Company to have the use in perpetuity, free from all charge for rent or repairs, of one-fourth of the entire water-power developed, and also the right to rent for a specified time, at the rate of fifty cents per annum per square inch of water-power, measured by openings of water-wheels, so much additional power as the Ordnance Department may deem expedient.

* * * * * *

"5. Sixty thousand dollars of the present appropriation to be applied to the extension of the present stone dam on the Moline side, and $40,000 to the extension and repairs of the wing-dam and removal of such deposits as may be required for the extension and repairs of said wing-dam. The use of the present water-power shall not be unnecessarily obstructed during the construction of the proposed work, nor shall any rent be required until the improvement contemplated by the $100,000 appropriation shall have been made."

* * * * * *

By joint resolution of Congress, approved March 2, 1867 (Appendix XI), the Secretary of War was authorized and empowered to carry into effect the recommendations of the commission above referred to, "and to make application for that purpose of the money heretofore appropriated for securing water-power at the head of Rock Island"; and under this authority a contract was entered into by the Secretary of War for and in behalf of the United States, and Mr. Charles Atkinson, president, for and in behalf of the Moline Water-Power Company, and signed by them on the 20th August, 1867, and the 18th June, 1867, respectively. (Appendix XII.)

In carrying this contract into practical effect, several questions arose regarding the construction to be given to certain points upon which the parties in interest were not agreed; and General Rodman, under date of August 5, 1868, advised that the views of the commissioners should be obtained as to the true intent of their recommendation in relation to the points referred to (Appendix XIII). The replies of the commissioners are herewith, marked Appendix XV, XVI, XVIII.

In 1869 a change of plan of dam was proposed, in order to lessen the cost of construction, which involved the excavation of a canal for carrying off the tail-water from the company's wheels, said canal to cross the lands of the company; and a second contract was entered into with the company, by which the land needed for the purpose was ceded to the United States. This contract was signed by the Secretary of War "under the authority of the joint resolution of Congress approved March 2, 1867." (Appendix XIX.) These two contracts are the only ones between the United States and the Moline Water-Power Company, and are those referred to in the joint resolution approved March 3, 1877, under which the present commission was appointed. If, therefore, the company has cause to complain, it must be from the failure of the United States to carry out certain of the stipulations embraced in one or both of these contracts.

The particular causes of complaint as presented by the company will be found in the communication of its president, dated May 8, 1877 (Appendix XXV). They may be briefly stated as follows:

1. That the government has not constructed the wing-dam as understood and agreed.
2. It has not excavated the channel from deep water into the pool as was proposed to be done as a substitute for the long wing-dam.
3. It has not removed the deposits existing in the pool at the time of making the contract of April 8, 1869.
4. It has received transfer, and taken and holds possession of the company's property without performing the consideration agreed upon.
5. It has violated the condition of section 6 of original contract by leaving in the pool a part of the bottom of the coffer-dam, and in the water-way at mouth of the canal a mass of stone which holds back the tail-water, and is a positive detriment to the power.
6. It has failed to maintain the water-power by its neglect to remove the annual accumulations in the pool since the execution of the contracts, and which have increased to an extent which threatens at no distant day to make the entire power practically worthless for a considerable portion of the year. The company estimates the amount of these accumulations at from 133,000 to 150,000 cubic yards.

In regard to the first of the foregoing complaints, it appears that the only obligation incurred by the United States is contained in the third stipulation of the original contract and the fifth recommendation of the Rock Island commission, by which $40,000, or so much thereof as the War Department may consider necessary, was to be applied to the extension and repairs of the wing-dam. It appears from the statement of the commanding officer at Rock Island (Appendix XXIX), that the money actually paid out was $28,874.72, to which should be added $26,458.62 for stone obtained from the

excavation on Rock Island Rapids improvement and charged at the same price as was paid to the Moline Water-Power Company for similar stone, and $806.93 for labor of enlisted men; making a total of $56,140.27, or over $16,000 more than was specified in the agreement.

As regards the second complaint, there is nothing to be found in either of the contracts in reference to the excavation of the channel alluded to. Such a channel has been proposed, and an appropriation therefor asked of Congress in order to bring into the pool the amount of water in low stages of the river needed for the full development of the power required by the government, including that to which the company would be entitled.

The third complaint seems to be founded on the third stipulation of the contract of April 8, 1869, which provides that "the United States shall resume, as early the present season as the stage of water will permit, the development and prosecute to completion, according to agreement, the upper portion of the water-power and the removal of deposits in the pool." The only reference to the removal of deposits is found in the fifth recommendation of the Rock Island commission (which recommendations form a part of the original contract), wherein it is provided that $40,000 shall be applied "to the extension and repairs of the wing-dam and removal of such deposits as may be required for the extension and repairs of said wing-dam." In fact, however, it appears from the statement of the commanding officer that 121,010 cubic yards of deposit were removed from the pool during the months of May (the date of the contract) to December of that year.

The fourth complaint being of a general nature, will be considered further on.

As regards the fifth complaint, it is stated by the commanding officer in his communication of the 13th June, 1877, that a great deal of attention has been given to the removal of the bottom of the old coffer-dam, and that he is satisfied that not enough remains to form an "obstruction" to the pool; that the site of this coffer-dam is in a deep part of the pool compared with the depth at the head, and that the water, in the lowest stage of the river, stands level over this part of the pool, which it would not do if there were an obstruction at that point. Respecting the second part of the complaint, the commanding officer states that the canal was excavated under his supervision, and that a mass of stone was not left in the mouth of the canal, and that none has been put there since its completion. (Appendix XXXVI.)

The sixth alleged grievance is met in part in the remarks regarding the third, where it is stated that the only reference to the removal of deposits was to be found in the fifth recommendation of the Rock Island commission, that such deposits shall be removed as may be required for the extension and repairs of the wing-dam; the cost of the removal to be paid out of the $40,000 assigned to said extension and repairs. It is undoubtedly true that the entrance to the pool is now so obstructed by the accumulation of deposits as to practically keep out the water in low stages of the river, so that on this account the mills are then without power. The average time of each year when the mills are without serviceable power was estimated by the mill-owners, who appeared before us, at three months, and three months with half power.

There are fifteen wheels in use, affording about fifty horse-power each, or seven hundred and fifty in all. The above estimate of the time during which the mills are without sufficient water-power would seem to be much exaggerated, judging from the record of the daily stages of water kept by the Ordnance Department.

Although the United States have nowhere specifically agreed to remove the deposits in the pool, except as stated in the fifth recommendation of the Rock Island commission, and in the contracts of 1867 and 1869, which provide for the "removal of such deposits as may be required for the extension and repairs of the wing-dam," a removal which was fully accomplished long since, yet it appears from the statement of the commanding officer that there was actually removed between January, 1869, and October, 1876, the large amount of 151,265 cubic yards. (Appendix XXX.)

The fourth complaint charges, in a general way, that the United States has received transfer and holds possession of the company's property without performing the consideration agreed upon, while it appears that the only consideration in the contracts was that the United States should apply the existing appropriation of $100,000, and any future appropriations that might be made, to the development and maintenance of the water-power, giving to the company one-fourth the power so developed free of cost, with the privilege of taking at a nominal rent an additional amount not needed by the government. The United States has actually expended for these purposes the sum of $758,227.21. (Appendix XXXI.)

From what has been stated it appears that the specific complaints of the Moline Water-Power Company are not sustained, with the possible exception of the fifth. It is presumable, however, that the company expected, in transferring its share of the water-power privilege in question (one-half), that the government would go on with its development to the extent required for the purposes of the arsenal, including the removal of such of the deposits from the pool, and the opening of a sufficient channel into the same, to secure the requisite supply of water in low stages; and it is natural,

perhaps, that disappointment should be felt that this expectation has not been fully realized. All this will still be done if, as is presumed, the government shall use the water as a motive-power for the shops, instead of steam. The dams are all built, the gates are in place, and the machinery ready for setting up. The cost of this power will be only nominal as against at least $60 per horse-power per annum for steam; and as the commanding officer estimates that provision should be made for at least two thousand horse-power for government purposes, there would be a saving of, say, $120,000 per annum by using water instead of steam when running to the extent referred to.

Respectfully submitted.

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers, Bvt. Maj. Gen., U. S. A.
H. G. WRIGHT,
Lieutenant-Colonel of Engineers, Brevet Major-General.
HENRY L. ABBOT,
Major of Engineers, Brevet Brigadier-General.

Hon. GEORGE W. MCCRARY,
Secretary of War, Washington, D. C.

APPENDIX I.

[PUBLIC RESOLUTION NO. 7.]

JOINT RESOLUTION to appoint a commission to examine into the matter of contracts made by and between the United States and the Moline Water-Power Company as to the water-power at Moline, Ill., and to report to Congress as to same.

Whereas the Moline Water-Power Company, of Moline, in the State of Illinois, complains that certain contracts made with said company by the United States, through the Secretary of War, acting under the authority of Congress, have not been carried out in good faith in developing and maintaining the water-power at said town of Moline, as required by said contracts, and that by reason of such failure said company has sustained and is sustaining large damages: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and required to appoint a commission to consist of three competent civil engineers, one of whom shall be the Chief of Engineers of the United States Army, whose duty it shall be to examine into the subject-matter of said contracts, made by and between the United States, as aforesaid, and the said water-power company, as to said water-power, and the development and maintenance of the same, and to report to the Congress of the United States at its next session what, if anything, is necessary to be done by the United States to carry out in good faith said contracts, and to relieve said water-power company from its alleged grievances. Said report to be submitted, through the Secretary of War, to the Congress of the United States at the commencement of its next session and to be directed to the Speaker of the House of Representatives.

Approved March 3, 1877.

APPENDIX II.

[Special Orders No. 72.]

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE,
Washington, April 5, 1877.

[Extract.]

* * * * * *

6. In compliance with the joint resolution of Congress, approved March 3, 1877, authorizing and requiring the Secretary of War to appoint a commission to examine into the matter of contracts made by and between the United States and the Moline Water-Power Company as to the water-power at Moline, Ill., and to report to Congress as to the same, the Secretary of War directs that a commission, to consist of—

Brigadier-General A. A. Humphreys, Chief of Engineers,
Lieutenant-Colonel H. G. Wright, Corps of Engineers,
Major H. L. Abbot, Corps of Engineers,

assemble in Washington, D. C., on the 10th day of April, 1877, or as soon thereafter as practicable, to consider the matter in question; and that, under the orders of the

senior member of the commission, it proceed to Rock Island, Ill., and make such other journeys and visit such works as may be necessary for the investigation of the subject presented to it. The cost of said journeys to be defrayed from the appropriations for transportation of the Army.

The commission will report to the Secretary of War; and its members, upon completion of these duties, will repair to their several stations.

* * * * * * *

By command of General Sherman:

E. D. TOWNSEND,
Adjutant-General.

Official:

S. N. BENJAMIN,
Assistant Adjutant-General.

APPENDIX III.

Information respecting title and history of the Moline Water-Power Company, furnished by Charles Atkinson, president Moline Water-Power Company, to Colonel D. W. Flagler, January 4, 1877.

In February, 1837, the legislature of Illinois granted to David B. Sears and John W. Spencer a charter to build a dam across the slough to Rock Island.

In February, 1839, this charter was extended.

The dam was built in 1841 and 1842; a saw and grist mill put up on the Moline side same season.

Water-power was occupied by David B. Sears and associates for several years; in 1851 it passed by sheriff's deed to Pitts, Gilbert & Pitts, formerly of New York.

About 1853 or 1854, Pitts, Gilbert & Pitts entered into contract with C. Atkinson and others for the sale of the entire property, including water-power and mills.

This arrangement was not carried out, a suit followed, but was ultimately settled by compromise, and the contract was surrendered, together with a charter obtained by C. Atkinson and associates, February 14, 1855. Pitts, Gilbert & Pitts organized a company under this charter and carried on business several years.

The company issued a quantity of bonds to Hamilton White, of Syracuse, N. Y., in 1859, to raise money for improvement and repairs.

These bonds were distributed to Horace K. White, Charles Sedgwick, and several other parties in that city and vicinity.

The bonds not being paid, the whole property, including water-power and franchises, subsequently came into the possession of the bondholders, and finally a title by sheriff's deed to Horace K. White, jr., April 25, 1864, who held as trustee for himself and associates.

During the negotiations commenced between Atkinson and associates on the one part for the purchase of the water-power and property adjoining, and in expectation that they would ultimately buy it, they (Atkinson and associates), in February, 1865, obtained the charter of the Moline Water-Power Company. In December, 1865, they organized a company under this charter, and the same date made purchase of the water-power and franchises and of land adjoining and have occupied since.

Official copy.

D. G. FLAGLER,
Major of Ordnance, Brevet Lieutenant-Colonel, United States Army, Commanding.

APPENDIX IV.

AN ACT to incorporate the Moline Water-Power Company.

SECTION 1. *Be it enacted by the people of the State of Illinois represented in the General Assembly*, That John Deere, S. W. Wheelock, D. C. Dimock, John M. Gould, J. S. Keator, Charles Atkinson, and their associates and successors, are hereby constituted a body politic and corporate, by the name and style of the "Moline Water-Power Company," and by that name they and their successors shall in law be capable of suing and being sued, of pleading and being impleaded, in all courts and places whatsoever.

SEC. 2. Said company may own real estate and a part or all of the water-power at Moline, and are authorized to carry on such kinds of manufacturing business as they may desire, or lease or sell water-power or land to others for that purpose.

SEC. 3. The management and direction of the affairs of said company shall be vested in a board of directors to be elected by the stockholders, and said company is hereby authorized to establish any by-laws and regulations, and to alter or amend the same,

as shall be necessary to carry out the provision of this charter, provided the said by-laws and regulations do not conflict with or be repugnant to the laws of the United States or of this State.

SEC. 4. The capital stock of said company may be seventy-five thousand dollars, with the privilege of increasing to an extent not exceeding three hundred thousand dollars, and be divided into shares of one hundred dollars each.

SEC. 5. This act to take effect and be in force from and after its passage.

ALLEN C. FULLER,
Speaker of the House.
WM. BROSS,
Speaker of the Senate.

Approved February 16, 1865.

RICHARD J. OGLESBY.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Sharon Tyndale, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office. In witness whereof I have hereunto set my hand and affixed the great seal of the State, at the city of Springfield, this 28th day of February, A. D. 1865.

SHARON TYNDALE,
Secretary of State.

APPENDIX V.

ROCK ISLAND ARSENAL,
November 7, 1865.

SIR: I deem it my duty respectfully to call the attention of the department to the present condition of the slough, or the minor channel of the river, running between Rock Island and the Illinois shore.

Before any artificial obstructions were placed in this channel a sufficient quantity of water passed through it to keep it free from deposits of sediment and give a healthy flow of water.

The following obstructions have been placed in this channel, viz: At the lower end, the piers and embankment of the wagon-road bridge from the island to Rock Island City; and a short distance above it, those of the railroad bridge; and at a point near the upper end of the island, a close dam entirely across this channel, built by a water-power company, and so constructed as to allow no water to pass over it, and only so much through it as passes from leakage, and that which is used as motive power. The effect of all these obstructions is to cause a sluggish flow of water in the channel, and deposits of sand, mud, sawdust, &c., above and below the bridges at the lower end of the island, and of sand and mud at the upper end above the dam of the water-power company. These deposits have been gradually accumulating for a number of years, and already amount to a number of acres at each of the obstructions. If these obstructions be allowed to remain as they now exist, this channel must ultimately, and, in my judgment, at no very distant day, become a pool of stagnant water, which cannot fail to affect seriously and injuriously the sanitary condition of this island.

The bridges are both necessary to the public interest here, and the water-way under them may be so increased as to offer no injurious obstruction to the flow of water.

The water-power derived from the water-power company's dam may, I think, if it can be preserved without injury to the sanitary condition of the island, be advantageously used, together with that derived from the dam between the main island and Benham's Island, as a motive power for driving machinery in the public shops about to be erected on this island.

I should use the water-power to condense air to 50 or 60 pounds per square inch, and convey this condensed air to the shops in iron pipes and use it instead of steam—having steam-boilers for supplying steam to the same engines when the water-power should, from any cause, fail to supply condensed air.

I inclose herewith, for the information of the department, the views and propositions of the water-power company and others interested in the preservation of that power, for preserving it without injury to the sanitary condition of the island.

It appears to me that early and definite action upon this subject should be taken by the department at as early a day as practicable, as the deposits in the slough are, and will be, constantly accumulating.

I am, sir, very respectfully, your obedient servant,

T. J. RODMAN,
Major of Ordnance, Brevet Brigadier-General, U. S. A.

Brigadier-General A. B. DYER,
Chief of Ordnance, Washington, D. C.

APPENDIX VI.

MOLINE, ILL., *November* 7, 1865.

Major T. J. RODMAN,
Rock Island Arsenal:

SIR: Having by your kindness been permitted to read your letter to the department, of this date, referring to the dam at this place, and in pursuance of conversations with you in regard to the same, and its effect upon the sanitary condition of the island and neighborhood, I am authorized, in behalf of those with whom these conferences have been had, to say:

First. That up to this time it is not realized that any special unhealthy influences have ever yet been experienced by the building of our dam, though we must agree with you that, should the dam and bridges continue as they are now, the deposite will naturally increase. Our own interest and comfort have long since suggested a remedy, but which up to this time we have not been able to apply, as will hereafter appear.

It has always been the intention to extend the side walls far enough down stream to exhaust the capacity of the power, and to close up the space between the walls with piers and gates instead of a tight dam, as is now used; these gates are to be so made as to be opened at pleasure, and the water-way to be left as large as possible.

We have thought and still believe that, to open these gates, say, Saturday night after the close of work, and let them remain open until Monday morning, it would give a flow of water through the entire length of the slough of sufficient volume and force to carry away into the main river below the island all the sediment or deposit that will have accumulated during the week, provided the openings are sufficiently large at the bridges below, which I believe a very slight examination will satisfy you are at present very much too small.

In regard to the deposits already accumulated above the dam, we have always expected to remove the most of this by artificial means (the upper portion is mostly clean, sharp sand, suitable for building, and such as is now being used at the arsenal, at the lower end of the island); but even if no means except the gates were used to remove this deposit, we believe (as it is a smooth, rock bottom) that the whole would in time pass entirely out into the main channel if, as I before remarked, the bridge obstructions were taken away.

With this submitting of our mode of keeping up the water-power without jeopardizing the future healthfulness of either the island or its neighborhood, and of increasing the usefulness as a motive power, it is perhaps proper to say to you that the present dilapidated reputation of the Moline water-power comes from causes heretofore out of our power to remove.

For nearly twenty years this property has been embarrassed and encumbered with mortgages and vexatious lawsuits, and it is only very recently that the end of them seemed to be near.

In July or August, 1863, propositions for purchase were made by our people, and accepted by the owners, who live in the State of New York, but an examination of the titles showed such material difficulties that nothing could safely be done; but we think now the indications are that the arrangements may soon be completed as before agreed upon.

You will have noticed that our manufacturers have very considerably increased their works, showing their appreciation of the value of the water-power over steam-power, and on this point they have had a large experience; for owing to the accumulations and consequent shutting out a full supply of water they have had to resort to steam, and know it is by many times the most expensive motive power.

The extreme rise of the Mississippi River, as compared with streams flowing from mountainous countries, is so small, that no difficulty is experienced in having and keeping perfect control of it, and making it an even, constant, and effective power in all stages of the river. It will be perceived that any proposition (as seems to be contemplated in your letter referred to) made by us in the present condition of affairs could only be a contingent one.

Our plans and calculations as to future improvements have always been based on owning and occupying the power at both ends of the dam, but the new phase presented by the government, of taking entire possession of the island side, and using the power, suggests that any expenditures for further and more permanent improvement should be done *jointly*, and to this end the parties here who have negotiated for and intended the purchase of this property as soon as the titles are made right, have authorized me to say they will surrender all their claims to the island side of the dam, and join in all *further* improvements upon any basis which shall be equitable and just to the parties in interest.

In closing, we would respectfully desire to communicate through you to the department that the suggestion of taking away the dam and altogether destroying the water-power would, if carried out, be not only a great calamity to the town of Moline, but a direct blow to manufacturing interests in this part of the country; and besides would

cost the government in damages many times as much as would be required to make this water-power of the most permanent and efficient character and so improve it as to secure, beyond question, entire exemption from all local causes of unhealthiness to the island or its surroundings.

And I would also call attention to the fact that it would impair the navigation of the rapids, which the authorities at Washington became satisfied was considerably improved by building the dam and forcing the water into the steamboat channel.

I am, very respectfully, your obedient servant,

CHARLES ATKINSON.

A true copy.

T. J. RODMAN,
Major of Ordnance and Brevet Brigadier-General, United States Army.

APPENDIX VII.

ROCK ISLAND ARSENAL,
November 18, 1865.

P. R. REED, Esq.,
Moline, Ill.:

SIR: Pursuant to our conversation this morning, I request that you will inform me on the following points, viz:

1st. As to what damage your company would sustain by the entire removal of your dam.

2d. As to what remedy you propose to apply to prevent the gradual filling up of the slough, preserve the water-power, and secure a healthy flow of water through the slough channel.

3d. As to what will be the first cost of applying this remedy and what the annual cost thereafter.

4th. As to what proportion of this cost your company propose to bear in view of the United States having the right to use in perpetuity one-half of the power thus secured.

I am, sir, very respectfully, your obedient servant,

T. J. RODMAN,
Major of Ordnance and Brevet Brigadier-General, United States Army, Commanding.

APPENDIX VIII.

MOLINE, *January* 8, 1866.

General T. J. RODMAN:

DEAR SIR: In answer to your request that I would reply to your inquiries made of P. R. Reed, esq., permit me first to say that by the terms of the charter authorizing the building of a dam from the main shore to Rock Island, the *whole* water-power created thereby was granted to the builders and their assignees, the occupation of which has not only been acquiesced in and recognized by the government, but has been encouraged; and the owners are now willing to believe that the United States propose to impair these rights without making a fair equivalent.

The questions to Mr. Reed, as I understand them, are:

1st. What amount of damage will this company sustain by entire removal of dam?

2d. What remedy is proposed to prevent further accumulations, and what plans for further improvement?

3d. What will be the first cost and what annually thereafter?

4th. What proportions this company propose to bear, in view of the United States having the use in perpetuity of half the power?

My reply to the first question is, that the company are unwilling to name any sum for which they could agree that the dam may be removed and the water-power destroyed; for, besides to the great injury to its interests as a company, the damage to individual manufacturers (as I have ascertained by careful investigation) would be a no less sum than $250,000, and the damage to the real estate in the town of Moline could not be estimated less than 50 per cent.; the value of which is indicated by the assessor's books to be over $600,000. So that the actual damage sustained by its removal would be so many times more than the outside cost of putting it in the most perfect condition for use, and securing when needed a healthful flow of water, that it would seem ill-advised and very much out of place to name any sum for which it could consent to an arrangement that would so effectually ruin the present and prospective manufacturing interests of Moline.

In answer to question No. 2, I would say the remedy always heretofore proposed to prevent further accumulations has been to extend the walls a proper distance down

stream and fill across between these walls with piers and gates so arranged as to be opened at pleasure, and thus create when opened a strong current through the whole channel.

Or, if the government adheres to the plan of occupying the whole island (which I understand you is its present purpose), and shall decide to use water-power, there would be no need of a wall on the island side, but let the water lay against the bank, and use it at the openings where the piers and gates touch the shore.

Or, in order to get the power still lower down and nearer to where the government shops are to be located, these piers and gates may be placed obliquely across from the lower end of lower wall to the shore and the power taken at the lower openings, which being so far down will secure the best head and freest discharge of water from the wheels and furnish power which will be permanent, reliable, and to an almost indefinite amount, and as safe as water-power can be made.

A portion of the upper end of the bar in the pond must be removed by artificial means, but the lighter part (by a little stirring up), as well as the accumulation below, will all wash out into the main river when the bridge openings are properly enlarged.

In answer to question No. 3, as to the first cost and annual expense hereafter, it is estimated that from fifty to a hundred thousand dollars can be judiciously expended on this water-power, which being done, it will be permanent, secure from flood or disaster, and of ample capacity for all government purposes; strengthen the capacity of the power on the Moline side, which now is the basis of the product of from one to two millions of dollars per annum of manufactured commodities per annum. After the first outlay the annual expenses will be merely nominal.

The answer naturally suggested by question number four would be that if government appropriate to itself the whole upper end of the island, and require this company to surrender to the United States the use in perpetuity of one-half the water-power created by their dam, it can well afford to make the improvement suggested, when by so doing it saves an actual damage of over half a million dollars, a permanent power is obtained for its own uses, and it aids to utilize natural forces rather than destroy, encourages rather than restrains manufacturing energies now so much needed, especially in the West.

Whereas the opposite course of removing the dam destroys its own water-power advantages, entails a heavy amount of real damage to manufacturing interests and small property-holders that are illy able to bear it and whose claims to justice cannot fairly be ignored, and also seriously damages the navigation of the upper Rock Island chain, which by river men was regarded largely improved when the dam and wing were built. The expenditures I have suggested contemplate an extensive addition to the wing-dam, which will tend to help the navigation of the rapids in proportion to the distance it is carried up. Our twenty years' experience and practical knowledge in the matter give us a confidence which others less acquainted may not have, and which is indicated by the substantial improvements connected with the power.

In closing, allow me to say I believe the damage to navigation over the Rock Island chain alone would be more than is required to make all the improvements required.

I am, with great respect, your obedient servant,

CHAS. ATKINSON,
President Moline Water-Power Company.

APPENDIX IX.

ROCK ISLAND ARSENAL,
January 22, 1866.

SIR: With a view to compliance with your instructions dated November 14, 1865, I addressed to Mr. Reed, then agent for the water-power company, a letter, of which the inclosed (marked A) is a copy.

This letter was turned over to Mr. Atkinson, now president of the Moline Water-Power Company, a copy of whose reply (marked B) is also herewith inclosed. This letter will convey to you the views of the water-power company on the subject in question. Apart from and entirely independent of the views and estimates therein given, the following is an estimate of the cost of removing, by artificial means, all obstructions necessary to restore the flow of the natural quantity of water through the minor or slough channel, viz:

To remove deposit in Moline Water-Power Company's dam	$26,000 00
To remove old dam, including deposit, brush, and other rubbish connected therewith.....	4,000 00
Total cost of removing all obstructions connected with the Moline Water-Power Company's dam.....	30,000 00

To remove 200 feet of embankment of railroad contiguous to bridge	$1,000 00
To remove 200 feet of embankment of wagon-road contiguous to bridge.	1,000 00
To remove deposit above and below this embankment	4,000 00
To extend wagon-road bridge over 200 feet of embankment removed, including abutments, piers, and bridge.....	5,000 00
To extend railroad-bridge over 200 feet of embankment removed, including abutments, piers, and bridge.....	8,000 00
Total cost of removal of all obstructions and preserving bridge to Rock Island City.....	49,000 00

The views of the water-power company, as obtained from Mr. Atkinson in conversations had with him, as to the mode of removal of their old old dam and the obstructions caused by it, are, first, to extend their wall down the stream, and near the Moline shore, 1,000 to 1,200 feet, and then extend the dam across to and at right angles with the island shore, placing sluice-gates and wheel-seats along both wall and dam, so that when the sluice-gates are all open their aggregate water-way will equal the width of the slough at its narrowest point above this dam. Then remove the old dam, the material of which he estimates will pay for its removal. Then open the sluice-gates in the new wall and dam, and let the water carry away the deposits in the old dam, aiding the operation, if necessary, by loosening up the deposit by artificial means; when, with the removal of the bridge embankments at the lower end of the slough, Mr. Atkinson anticipates that the water will carry away into the river below the island all deposits above the present dam, and that by opening these sluice-gates at intervals, say from Saturday night till Monday morning of each week the slough channel will be kept free from deposit and a healthful flow of water through it secured.

In the soundness of these views, touching the removal of present deposits, I do not feel entire confidence, being apprehensive that the deposit now above the dam would lodge at different points along the slough below it.

In keeping the channel clean, however, after it shall have been once cleared, and at the same time preserving the water-power, I know of no more feasible plan than that proposed by Mr. Atkinson; and while I fully concur with him as to the importance of preserving the water-power, if *it can be done and a healthful flow of water through the slough at the same time secured*, I regard the former as secondary to the latter consideration.

Independent of clearing away present obstructions, old dam, &c., it is estimated that the new dam and wall, properly and substantially built of cut-stone, including sluice-gates and the means of operating them, will not cost less than $75,000. And in view of the facts that the water-power company had exclusive control of that power and all matters connected therewith, and have enjoyed all profits since its origin, and that it is now rapidly declining in value, as well as obstructing the proper flow of water through the slough, and must soon become worthless as a water-power, owing to accumulation of deposits, and of the want of absolute certainty attaching to the proper remedy; and of the additional facts that the government is not yet ready to avail itself of the water-power, and that it must in any event prepare to drive its machines by steam in order not to be stopped by failure of or accident to the water-power; it appears to me that the water-power company should, if they desire the immediate use of the power, proceed at once to build the new dam and walls, as above described; clear away their old dam and all other obstructions connected therewith, and fully test the efficiency and permanence of their proposed remedy. Then, if the remedy shall prove efficient and permanent, the United States should pay to the water-power company one-half of the cost of construction, with compound interest on that amount from the date of its expenditure by the company to the date of payment by the United States, and bear thereafter one-half of the expense of repairs to the dam and wall, and have the right, in perpetuity, to use one-half of the power thus secured.

I am, sir, very respectfully, your obedient servant,

T. J. RODMAN,
Major Ordnance and Brevet Brigadier-General, U. S. A.

Major-General A. B. DYER,
Chief of Ordnance, Washington, D. C.

APPENDIX X.

OFFICE OF THE ROCK ISLAND COMMISSION,
Washington City, January 24, 1867.

The board having taken under further consideration the matter of the Moline Water-Power Company, finds it impracticable to determine, as a separate question, the dam-

age sustained by that company in the taking of one-half of their water-power by the United States, because of the inseparable character of the interest thus acquired by the United States and that retained by the company.

The determination of this question of damage was, however, rendered unnecessary by the negotiating of a transfer of the entire water-power from the Moline Company to the United States, under the act of Congress of June 27, 1866, appropriating $100,000 for the purpose of securing water-power at the head of Rock Island. After a full discussion with the president of the Moline Water-Power Company, the board agreed with him upon a basis for the settlement of all the questions pending between that company and the United States, and respectfully recommend its adoption by the War Department.

The basis agreed upon is as follows:

1. The Moline Water-Power Company to convey to the United States the fee of the entire Moline water-power, and also to grant to the United States the unrestricted use, in perpetuity, without charge, of so much of the bed of the river not already belonging to the United States, as may be covered by the pool and wall necessary to develop the water-power, and ten feet outside of said wall, together with the right of access thereto from the Illinois shore at all times, for the purpose of constructing or of repairing said wall.

2. The government to develop and maintain the power, so far as it can be done with the money heretofore appropriated, and that which may hereafter be appropriated by Congress for that purpose.

3. The Moline Water-Power Company to have the use, in perpetuity, free from all charge for rent or repairs, of one-fourth of the entire water-power developed, and also, the right to rent for a specified time, at the rate of fifty cents per annum per square inch of water-power, measured by openings of water-wheels, so much additional power as the Ordnance Department may deem expedient.

And, further, that the company, its lessees or assigns, shall have the right to place their wheels upon the ten feet outside the wall, provided that the foundation of said wall shall not be thereby disturbed nor the stability of the wall thereby endangered.

And also, further, that this granting to the United States of the unrestricted use of the pool, the wall, and the ten feet outside the wall, shall not be so construed as in any manner to operate as a bar to the free use and occupancy by the company, its lessees or assigns, of the same premises for all purposes connected with and incidental to the use of their portion of the water-power, or such as may be leased by them, and such use shall not interfere with or obstruct the United States in the free use of its portion of the water power.

4. The works to be built by the government for the development of the power to be so arranged as to give the company the free use of all the power herein contemplated to be used by the company, both as to the use of the fourth part, so far as may be practicable without impairing the power in use by the government to a disproportionate extent, and also to the proposed power to be leased. The openings in the dams intended for the use of the company to be of such size and in such position as the company may elect.

5. Sixty thousand dollars of the present appropriation to be applied to the extension of the present stone dam on the Moline side, and $40,000 to the extension and repairs of the wing-dam and removal of such deposits as may be required for the extension and repairs of said wing-dam. The use of the present water-power shall not be unnecessarily obstructed during the construction of the proposed work, nor shall any rent be required until the improvement contemplated by the $100,000 appropriation shall have been made.

6. It is also further understood that neither occupant of the above water-power shall have the right, nor shall allow others, to obstruct either pool or water-way by sawdust, or bark, or other substances, to the detriment of the water-power or the sanitary condition of the vicinity.

* * * * * * *

All of which is respectfully submitted.

J. M. SCHOFIELD,
Major-General,
JAMES BARNES,
SELDEN M. CHURCH,
Commissioners.

APPENDIX XI.

JOINT RESOLUTION to enable the Secretary of War to carry out an agreement in relation to water-power for the arsenal at Rock Island.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be, and he is hereby, authorized and

empowered to carry into effect the recommendations of the commissioners appointed under the acts of April 19, 1864, and June 27, 1866, relative to the Moline Water Company and the water-power at Rock Island, Illinois, as contained in the report of said commissioners, and to make application for that purpose of the money heretofore appropriated for securing water-power at the head of Rock Island.

Approved March 2, 1867.

(United States Statutes at Large, volume 14, page 573.)

APPENDIX XII.

This agreement, made between Ulysses S. Grant, Acting Secretary of War, acting under authority of the joint resolution of Congress approved March 2, 1867, for and in behalf of the United States of America, and the Moline Water-Power Company of Illinois, by Charles Atkinson, its president, witnesseth:

First. The Moline Water-Power Company, for the consideration hereinafter mentioned, hereby conveys in fee to the United States of America their entire water-power with the free and unrestricted use by the said United States of so much of the bed of the Mississippi River as may be required for the further development of said water-power, which development, together with the maintenance of that power, is to be done by the United States out of the appropriation applicable to those purposes and of any future appropriations that may be made applicable to the same.

Second. The United States of America hereby grants to the Moline Water-Power Company the right of the free use of one-fourth of their entire water-power above conveyed and the privilege of renting for a specified time, at the rate of fifty cents per annum per square inch, so much additional water-power as the Secretary of War may deem it expedient to authorize to be rented, and also agree to arrange the Government works for the developing the water-power in such manner as to enable the Moline Water-Power Company to avail itself of the right and privileges above mentioned.

Third. The United States of America hereby agrees to apply $40,000, or so much thereof as the War Department may consider necessary, to complete the wing-dam, and the residue of the appropriation of $100,000 to the extension of the dam on the Moline side; and, further, not to obstruct unnecessarily the use of the present water-power during the execution of the work above stated, nor to require the payment of any rent until the improvement contemplated thereby shall have been made as far as the expenditure of the $100,000 will permit.

Fourth. It is mutually agreed between the Moline Water-Power Company and the United States of America that neither of them shall at any time make any obstruction of the water-power as now existing or hereafter to be developed. It being further understood that this agreement is for the purpose of carrying out the recommendation of the commissioners appointed under the acts of April 19, 1864, and June 27, 1866, relative to the Moline Water-Power Company and water-power at Rock Island, Illinois, and that the recommendation of said commissioners now on file in the War Department at Washington City is regarded as part of this agreement.

In testimony of the foregoing, we, the undersigned, U. S. Grant, Acting Secretary of War, acting for and in behalf of the United States of America, and under authority of the joint resolution of Congress approved March 2, 1867, and Charles Atkinson, president of the Moline Water-Power Company, acting for and in behalf of the company, have hereunto set our hands and seals, at the place and date set opposite to each, respectively.

[SEAL.]

U. S. GRANT,
Secretary of War ad interim.

WASHINGTON, D. C., *August* 20, 1867.

[SEAL.]

CHARLES ATKINSON,
President Moline Water-Power Company.

MOLINE, ILL., *June* 18, 1867.

APPENDIX XIII.

ROCK ISLAND ARSENAL, *August* 5, 1868.

SIR: I find in carrying into practical effect the contract between the United States and the Moline Water-Power Company, including the recommendations of the commission appointed under the acts of Congress approved April 19, 1864, and June 27, 1866, the following points, which seem not to be clearly understood by the parties in interest, and which ought, in my judgment, to be definitely settled and understood while the parties to said agreement and the commissioners who made the recommendations are still living and accessible, viz:

1st. To what extent are the United States to develop the water-power conveyed them by the Moline Water-Power Company? Are they to clean out and deepen the

tail-race as outlet for the water used by the company? Are they to put in a temporary bulkhead to enable the Water-Power Company to use its share of the power that would be thus developed, pending the complete permanent development by the United States of the entire water-power? And in case the company shall be permitted to, and does, put in such bulkhead, shall it be required to remove it when the United States shall require its removal? Are the United States to put in gates for opening and closing the water-way left in the permanent stone dam for use of the company?

2d. In article first of the agreement between the United States and the Moline Water-Power Company, that company conveys in fee to the United States of America their entire water-power. In article third of said agreement the United States of America grants to the Moline Water-Power Company the right of the free use of one-fourth of their entire water-power above conveyed. Article fourth of same agreement states it to be further understood that this agreement is for the purpose of carrying out the recommendations of the commissioners appointed under the acts of April 19, 1864, and June 27, 1866, relative to the Moline Water-Power Company and water-power at Rock Island, Illinois, and that the recommendations of said commissioners now on file in the War Department at Washington City are regarded as part of this agreement.

The commissioners above referred to, in article third of their recommendations, recommend that the Moline Water-Power Company shall have the use in perpetuity free from all charge for rent or repairs, of one-fourth of the entire water-power developed. The United States took possession of, paid for, and now own the water-power developed and formerly owned by D. B. Sears. This water-power is supplied with water from the same pool as the Moline water-power, and the same works that develop one develop the other; and Mr. Sears informs me that he always considered that he was entitled to half of the water that came into the common pool. Now, the questions growing out of the point above stated are: First. What was the true intent and meaning of the expression "one-fourth of the entire water-power developed," used by the commissioners? Did it mean that the Moline Water-Power Company was to have one-fourth of the Sears water-power in addition to the one-fourth of that conveyed by the company to the United States? Or did it mean that the company was to have one-fourth of the entire power which they had conveyed to the United States after it had been developed by the United States, in whatever manner or to whatever extent? Or did it mean that the company was to have one-fourth of the entire power which they have conveyed, as it should be developed by the United States, in the vicinity of their works? In other words, in what manner is the quantity of water which the company is to have to be determined?

3d. The United States have granted to the Water-Power Company the privilege of renting for a specified time, at the rate of fifty cents per annum per square inch, so much additional water-power as the Secretary of War may deem it expedient to authorize to be rented, and also agrees to arrange the government works for developing the water-power in such manner as to enable the Moline Water-Power Company to avail itself of the right and privilege above mentioned. In locating the permanent stone dam as far down below the company's works as will enable them to draw off and use their portion of the power, I have so placed it as to leave the company fully one-fourth of the bed of the river for the escape of their tail-water.

In extending the dam down stream it will be necessary, should the Secretary of War deem it expedient to rent additional power to the company, to so locate the dam as to give increased water-way for the escape of the increased amount of water that would be used by the company in proportion to the amount of power so rented and used; but should the United States so locate their dam, it will so contract their water-way as to deprive them of the ability to use their entire water-power when they may desire to do so, and when it may be of the utmost importance that they should do so. This is on the supposition that the development of the water-power is effected by extending the stone dam down the bed of the river to the point (1) on the accompanying plan, on the island shore, where the United States will take off their power. Another mode of development, and one which I prefer, if it can be effected at about the same cost, is to curve the dam to the left as it extends down stream, and abut it against the Illinois shore at point (2), and cut a canal from this point across the tongue of land to the point (3) for the escape of the company's tail-water, and building a dam wall with a sufficient number of water-ways in it to take off the entire water-power, including the company's share thereof, when required, from the point (1) on the island to the point (4) on the Illinois shore. This canal would save the building of about 1,500 feet of stone dam, and if made 200 feet wide would, it is estimated, cost about the same sum of money as the 1,500 feet of wall. The conformation of the river at this point is such that, by this mode of development and increasing the width of the canal, the United States might, if deemed expedient, rent a very considerable amount of power when not required, and still be able to resume the use of this entire power at the point (1) when required, together with that of the company, should the exigencies of war ever render it necessary or desirable to do so.

It is agreed in article four of agreement between the United States and the Moline Water Power Company that neither of them shall at any time make any obstruction

of the water-power as now existing or hereafter to be developed. Does or does not this article exclude the harboring in the common pool of saw-logs or other material that will tend to fill up the dam or obstruct the flow of water past the company's works on its way to the point of utilization by the United States ?

T. J. RODMAN,
Lieutenant-Colonel Ordnance, Bvt. Brig. Gen., U. S. A.

Bvt. Maj. Gen. A. B. DYER,
Chief of Ordnance, Washington, D. C.

APPENDIX XIV.

MOLINE, *October* 20, 1868.

SIR: The communication of yourself to Chief of Ordnance submitted to this company for information and remark, together with your accompanying note, having been received, and the subject-matter considered by the directors of the company, is, in accordance with your request and in compliance with their direction, herewith returned, with a few brief remarks, namely:

1st. Congress having understood the nature and import of the transaction between the company and the United States, accepted the recommendation of the commission, and in accordance therewith made special appropriations of money to carry the same into effect; and this company having promptly, and in good faith, performed its part of the agreement, by conveying the fee of their water-power, which was accepted and taken possession of by the United States, they feel that they have no other alternative but to refer to Congress any matter of controversy in the premises that may arise between them and the War Department, relying confidently on that body to carry out the spirit and understanding of that agreement.

2d. As to the matter of dividing the water-power, this company will hold itself in readiness at any suitable time to act with the government in making an equitable division, but does not perceive how anything in that direction can properly be done until the power is developed; and without replying to the opinion introduced of Mr. D. B. Sears, as to his rights, and by inference to theirs, they would take this occasion to say, that they at all times claim, under the contract and understanding of the agreement, that they are entitled to the free use in perpetuity of one full quarter of all the power that can be produced from the water that will pass into the pool between the island and the main shore, with all obstructions removed; and they expect and claim, under the contract, that the United States should arrange its works, as well with reference to renting water-power, as to that which the company have a right to use in perpetuity free of rent and repairs.

3d. Regarding plans of adapting the water-power to suit the location of government shops on the island, it probably is not expected, and they deem it somewhat out of place at this time, to express any opinion on that subject other than to say that they cannot consent to any arrangement to an end that will tend to impair or embarrass their rights under the agreement.

The 4th article of the agreement, and the 6th article of the recommendation of the commission, both having reference to the same subject, is understood by this company to mean that the government will not place or permit any substance to remain in the pool or water-way to the detriment of the water-power; therefore requiring, under the contract, that the United States should clear out and deepen the tail-race to an extent that may be necessary to secure an easy and free discharge of the tail-water from the wheels of the company, its lessees and assigns; and also to remove the accumulations of sand, mud, or other substances in the entrance to, and within the pool, so that all the water necessary to a complete and full development of the entire water-power can pass in between the island and main shore.

In reference to the matter of bulkhead and gates at openings, it is understood by this company that, when the United States accepted from them the fee of their water-power, and took possession of the same, it was an agreement on the part of the government that it would make and maintain all improvements, repairs, and things necessary for and pertaining to the delivery of water upon the water-wheels of the company, its lessees and assigns, without any unnecessary delay after appropriations had been made, and it is certain that the transfer and conveyance of the water-power belonging to this company would not have been made to the United States, or consented to, without such understanding on their part. It is desired that this reply accompany your letter to Chief of Ordnance.

With great respect, I am, your obedient servant,

CHARLES ATKINSON,
President Moline Water-Power Company.

Bvt. Brig. Gen. T. J. RODMAN,
Rock Island Arsenal.

The undersigned directors and stockholders in the Moline Water-Power Company fully indorse the above communication as containing their views and expressing their understanding of the subject considered.

J. M. GOULD.
JOHN GOOD.
S. W. WHEELOCK.
D. C. DIMOCK.
JOHN DEERE.
C. H. DEERE.
J. S. KEATOR.

APPENDIX XV.

ROCKFORD, *January* 20, 1869.

DEAR SIR: I received a few days since, inclosed from your office, a communication from General Rodman to yourself, and also a letter from Mr. Charles Atkinson in relation to the Moline Water-Power Company, with a request that I would give a statement of what I considered the true meaning and intent of the commissioners with regard to the points at issue. In replying I beg leave to say that if I had been furnished a copy of the agreement between the United States and the Moline Company, and the report of the commissioners thereon, it might have refreshed my recollection on some of the points. As it is, I can only give an opinion based upon my general recollection of what transpired before the commissioners, and the nature of the transaction; and, in doing so, will follow the order in the accompanying abstract of General Rodman's letter.

1st. The United States were first to build the dam a certain length (do not recollect the exact distance), but the height, length, breadth, number, and size of openings, and everything relating to its dimensions, manner of construction, and location were agreed upon between Mr. Atkinson, acting in behalf of the Moline Company, the commissioners, and General Rodman. The balance of the appropriation that had been previously made by Congress, after deducting the cost of the dam, was to be expended in removing the sand and other sediment that had already accumulated above the company's then present dam. This extension was intended and was supposed to be of sufficient length to enable the company to draw and use the full one-fourth part of the water and water-power created by the dam as proposed to be built, and being the amount they were to receive in consideration of their transfer of the fee of their water-power to the United States.

The further development of the power, being for the interest of the United States, was to be determined by the necessities of the War Department and the future action of Congress.

The temporary bulkhead to enable the company to use the power pending its complete development of the power, was to be put in by the company, and be by them removed when the improvement, as contemplated, should be completed and water-power be required for use by the United States.

The United States are bound to close any openings in the dams not in use by the company, as it is only by keeping these closed that the full power or head of water can be maintained. But the gates that let on and shut off water from the wheels of the company is a part of the machinery by which they make their power available, and in which the United States have no interest and with which they have nothing to do.

It is my understanding that the obligations of the United States are limited to the building and keeping in repair the dam, and in removing the deposits from the pool, and beyond this and outside of this they are not chargeable. This will indicate my understanding of the agreement in relation to cleaning out and deepening the tail-race. It is no part of the dam; it really adds no power to the water in the dam; it is a means by which the company avail themselves of all the power the United States have created at that particular point; and to my mind there is as much propriety in requiring the United States to blast out and sink their wheel-pits as their tail-race.

The using the water after it is held in the pool by the dam is entirely under the control of the company, except so far as no damage shall be done to the works of the United States, and they may go to such expense as they may judge to be to their interest.

The questions involved in the second article of the abstract were not, as I recollect, specifically raised before the commissioners. But it appears to me that their action in relation to the Sears power, and the principle upon which it was decided, clearly indicates their ideas of the rights of the Moline Company.

In determining the claim of Mr. Sears, as to the value of his interests, the cost of the dam, the water in use and its value, the amount of water available at that point not in use and its value, were all regarded as legitimate items in arriving at the compensation he was entitled to; thus, and I think correctly, recognizing it as an entire and

independent water-power, and entitled as a water-power to the value of all the water that could be discharged through that dam. The same principle is, in my view, applicable to the Moline power.

It is true that the construction of the Sears dam was largely beneficial to the Moline water-power. It is also true that the Moline dam is largely beneficial to the Sears power; but these benefits are purely incidental, and in no sense were they the objects the owner had in view in their construction. The most that can be said of the respective ownership is that the right to draw water from the pool was a right held in common, that each might use at pleasure on his own premises, or either could have abandoned his power or have removed his dam without being amenable to the other. The United States, having purchased the Sears power, hold it as entirely independent of the Moline Company as did Mr. Sears himself. They may use all the water they can discharge on that side of the island, or they may abandon it altogether and suffer it to go to decay, and the Moline Company would have no cause to complain.

The agreement with the Moline Company had reference only to the power created by the dam at Moline, and regarding it, as I do and did at the time, as an entirely independent power, I am clearly of the opinion that the Moline Company are entitled to the one-fourth of the water-power developed by the dam as proposed to be built at that point; or, in other words, one-fourth of the power from the water that can be drawn through the dam and discharged on that side of the island.

My recollection of article 4 is that it prohibits either party from obstructing or using the pool to the detriment of the other.

Asking to be excused for my prolixity, I am your obedient servant,

SELDEN M. CHURCH.

Bvt. Maj. Gen. A. B. DYER,
Chief of Ordnance.

APPENDIX XVI.

SPRINGFIELD, MASS., *January* 25, 1869.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th inst., transmitting copies of papers submitted by the Ordnance Bureau to the War Department concerning certain questions that have been raised as to the correct meaning of certain words in the report of the commission for settling the claims to property at Rock Island, of which I was a member, and requesting that I give a statement of what I considered, at the time of making the report, the true meaning and intent of the commissioners with regard to the points at issue.

1. It was understood that there was no obligation on the part of the United States to deepen the tail-race or outlet for the portion of water-power used by the company; but if the stone forming the bed of the stream at that point should prove to be of suitable quality for building the dam, the United States could use it for that purpose. It was not intended in the agreement to express any obligation on the part of the United States to erect a temporary bulkhead to enable the company to use its water-power pending complete developments; the company could do so, but must remove it whenever required by the United States.

It was understood that the United States were to put up gates for opening and closing water-gate left in the permanent dam for the use of the company.

2. The true intent and meaning of the expression "one-fourth of the entire water-power developed," as used by the commissioners, I understood to be, that the company was to have one-fourth ($\frac{1}{4}$) of the entire power which they had conveyed to the United States after it had been developed by the United States, in whatever manner and to whatever extent. It was not intended to include one-fourth ($\frac{1}{4}$) of the Sears water-power in addition to the one-fourth of that conveyed by the company to the United States.

3. Not being furnished with tracings alluded to, I am unable to make suggestions as to location of the dam and works.

4. It was not intended by article 4 of the agreement to exclude the United States from using the pool for its own purposes.

In regard to removing accumulations of sand, mud, &c., in the pool, it was understood that the United States would clear out the existing sand-bar in the pool so far as it could make use of the sand for its own purposes.

I am, very respectfully, your obedient servant,

JAMES BARNES.

T. J. TREADWELL,
Brevet Lieutenant-Colonel and Major of Ordnance, Washington, D. C.

APPENDIX XVII.

WASHINGTON, D. C., *February* 16, 1869.

SIR: In obedience to your verbal instructions, and after having read and carefully considered the recommendations of the board of commissioners and the agreement between the United States and the Moline Water-Power Company explanatory of and for carrying into effect said recommendations, together with letters of Selden M. Church, dated January 20, 1869, and James Barnes, dated January 25, 1869 (said Church and Barnes having both been members of said commission, and said letters being explanatory of their views and understanding as to the true intent and meaning of the recommendations of said board of commissioners, looking to an agreement to be entered into between the United States and the Moline Water-Power Company), I have the honor to submit the following as my views of the equity of the case:

First. The United States, having already complied with their obligations to the Moline Water-Power Company as to the development of wing-dam, are yet to extend the stone dam, so as to enable the company to utilize their portion of the water or water-power, including that which the Secretary of War shall deem expedient at any time to rent to the company; to remove the old dam and other deposits of sand, mud, &c., from the pool above the old dam; and to close the water-ways in said stone dam with gates, for retaining the water in the pool or letting it through the dam at will. The company to deepen their own tail-race and put in temporary bulkhead, should they so desire, at their own cost, and remove it when so required by the United States after the complete development of the water-power by the United States.

Second. The water coming into the common pool to be divided between the Sears water-power and the Moline water-power, in the ratio of the width of the channel between Benham's Island and Rock Island to that of the channel between Rock Island and the Illinois shore at the site of the company's old dam; the company to be entitled to the use in perpetuity, free of charge, of one-fourth part of the water or water-power thus allotted to the last-named channel, after it shall have been developed by the United States in the manner hereinbefore stated.

Third. The location of the stone dam is believed to be fair and equitable, and should therefore be approved.

Fourth. Neither the United States nor the Moline Water-Power Company have the right to in any manner obstruct the flow of water in or fill up the pool to the detriment of the other.

Fifth. If the Moline Water-Power Company will grant to the United States, free of charge, the right of way for a tail-race to carry the company's tail-water across the company's land, and the right to take and use such portion of the excavated material from said race as the United States may require for diking the shores of the pool to prevent overflow of the company's land and of Rock Island, and the right to transport said material across and over the company's land, and the right to abut the United States dam against the company's land at the upper end of said tail-race and at another point opposite or near to that on the island of Rock Island, at which the United States may utilize their portion of the water, then the United States shall commence the further development of water-power as soon as the stage of water will permit and at such point along the line of development as the company may indicate, and prosecute said development, including removal of old dam and bulkhead and deposits of mud, &c., above old dam, as rapidly as the stage of water and the funds on hand and that which may be hereafter appropriated and made applicable to that purpose will admit.

The increased cost to the United States of developing as desired by the company, and the advantages to be derived by the company and the United States from the canal mode of development, seem to me to render the last proposition just and fair.

Very respectfully, &c.,

T. J. RODMAN,
Brevet Brigadier-General, United States Army.

General J. M. SCHOFIELD,
Secretary of War.

APPENDIX XVIII.

WASHINGTON, D. C., *March* 17, 1869.

SIR: I have considered General Rodman's letter of 13th instant, which you referred to me, and have to make the following statement as to my understanding of the report of the Rock Island commission on the subject of the Moline Water-Power Company:

The United States are *not* to deepen the tail-race for the portion of the power to be used by the Moline company, and are *not* to put in any temporary bulkhead for the company.

If the company put in one, they (the company) should remove it when the permanent dam is completed.

Gates would seem to be a part of the permanent dam, and (unless otherwise specified in the contract) should be put up by the United States.

The "one-fourth" to which the company is entitled does *not* include any part of the water-power purchased by Mr. Sears. The company is entitled to one-fourth of the water-power which may be developed *between Rock Island and the Illinois shore.*

The dam should be so located that (as a general rule) the distance of any point of the dam from the two opposite shores may be proportionate to the quantities of water to be discharged above and below that point.

Article 4 prohibits either party from harboring logs in the pool to such extent as to obstruct the free flow of water to the portion of the dam used by the other.

Very respectfully, your obedient servant,

J. M. SCHOFIELD,
Major-General.

Brev. Lieut. Col. T. J. TREADWELL,
In charge of Ordnance Bureau.

APPENDIX XIX.

Whereas the Moline Water-Power Company of Moline, Rock Island County, Illinois, entered into agreement with the United States, under dates June and August, 1867, by which they transferred to the United States their entire interest in the water-power at Moline, Illinois, in consideration that the United States should make and maintain improvements necessary to the development of the same, and grant to said company the use in perpetuity of one-fourth part of the entire power developed and the further right to rent power upon conditions named in said agreement; and

Whereas, in the prosecution of the development of that portion of the water-power contemplated to be used by the United States, it is deemed necessary, for the more complete development and convenient use, that a portion of land owned by said company is required for a tail-race to carry off the tail-water of such portion of the water-power as the said company may use, and also that the United States should have the right to abut a dam and a wall against land owned by said company:

Now, therefore, for the purpose of facilitating the plans and purposes and of acting in the spirit of harmony and liberality toward the United States, the said Moline Water-Power Company hereby agrees to the following, viz:

1st. That they will grant and cede to the United States the right of way over and through their land for said tail-race, which is to be of sufficient capacity for the purpose named, free of cost, and will also cede, free of cost, the right to abut a dam and wall against their land at two such points as the United States may select.

2d. That the United States shall construct and maintain a wagon-bridge for the use of said company over and across said tail-race at such point as shall be designated by said company, and make suitable dikes to prevent overflow of said company's land. The United States shall be entitled to the building stone excavated from said tail-race and half the amount of excavated earth remaining after diking, with the right to remove the same over the company's land.

3d. The United States shall resume as early the present season as the stage of water will permit the development and prosecute to completion, according to the agreement, the upper portion of the water-power and the removal of deposits in the pool, and permit the company, if they should desire, to put in a bulkhead at the lower end of the wall built last season, and attach the same to the shore of Rock Island, and remove the same when the development of water-power is completed.

4th. This agreement to cede the land for tail-race and abutting dam and wall free of cost is to continue but two years from this date, and the United States Government is to have the right to enter upon the premises for the purpose of going on with the work any time within the two years by notifying the company that the canal mode of development has been adopted, and upon the completion by the United States of the conditions herein named as to the said upper portion, this company binds itself, its successors and assigns, to cede and convey to the United States the premises and privileges hereinbefore named, and also the right to discharge into the company's tail-race the surface-water from the island of Rock Island.

In testimony of the foregoing we, the undersigned, John A. Rawlins, Secretary of War, acting for and in behalf of the United States of America, and under the authority of the joint resolution of Congress approved March 2, 1867, and Charles Atkinson, president of the Moline Water-Power Company, acting for and in behalf of the com-

pany, have hereunto set our hands and seals at the place and date set opposite to each respectively.

[SEAL.]

JOHN A. RAWLINS,
Secretary of War.

WASHINGTON, D. C., *April* 8, *A. D.* 1869.

[SEAL.]

CHAS. ATKINSON,
President Moline Water-Power Company.

WASHINGTON, D. C., *April* 8, 1869.

APPENDIX XX.

ROCK ISLAND ARSENAL, *August* 11, 1870.

DEAR SIR: Yours of the 8th instant, inclosing a copy of a letter from Charles Atkinson, president of the Moline Water-Power Company, with a copy of an indorsement thereon by the Secretary of War, and directing me to report my views upon the subject, is received, and I have the honor to report as follows:

I do not know certainly to what Mr. Atkinson refers, in stating that he does not consider that the conditions of the agreement of April 9, 1869 (it should be April 8, 1869), between the Secretary and himself have been entirely fulfilled; but I presume he refers to what sediment still remains in the water-power pool. Nor do I certainly know to what contemplated changes he refers as likely to affect seriously the interests of the company of which he is president; but I presume he refers to the building of an embankment from the lower end of the present dam-wall to the upper end of the proposed canal, as approved by the Secretary of War last winter, instead of continuing the dam-wall down to head of canal. I have certainly completed the development of the upper end of the dam-wall, including thirty-seven openings with gates, and means of opening and closing them.

I have also removed, or intended to remove, the sediment from the pool as far as it could be advantageously done by dredging; and am now having a survey of the pool made in order to see just what amount of sediment still remains in it. And as neither the agreement above referred to nor the original agreement state to what extent sediments should be removed, I had intended to submit the survey above referred to to the department for its decision as to whether or not the United States should further prosecute the removal of sediment from said pool.

Neither of said agreements state in what manner or to what extent the United States shall develop the water-power.

Article 4 of the agreement of April 8th, above referred to, reads as follows, viz:

"This agreement to cede the land for tail-race, and abutting dam and wall free of cost, is to continue but two years from this date; and the United States Government is to have the right to enter upon the premises for the purpose of going on with the work any time within the two years, by notifying the company that the canal mode of development has been adopted, and upon the completion by the United States of the conditions herein named, as to said upper portion, this company binds itself, its successors, and assigns, to cede and convey to the United States the premises and privileges hereinbefore named, and also the right to discharge into the company's tail-race the surface-water from the island of Rock Island."

Now, I understand the first clause of this article to authorize the United States to enter upon the lands of the company for the purpose of going on with the work of development of water-power at any time within two years from the date of the agreement, without any other condition except that the United States were to notify the company that the canal mode of development had been adopted.

The second clause of this article requires the United States to fulfill the conditions cited in article 3 of same agreement before they can claim from the company a deed to the premises occupied by the canal; but there is no time stated within which these conditions shall be fulfilled.

I consider that the United States are bound in equity to develop the water-power in a reasonably substantial manner and to a reasonable extent, and that they have the right to accomplish this end in such a manner as they may choose.

On the receipt of advice from the Chief of Ordnance that an appropriation of money for the further development of water-power at this arsenal had been made by Congress, I notified the water-power company that the canal mode of development had been adopted by the Secretary of War, and entered upon the lands of the water-power company and commenced work. The work above referred to will cease, until further orders, this evening.

The season is already far advanced, the stage of water in the river and the weather are now favorable for the prosecution of this work, and every day lost will be detrimental to the public interest.

T. J. RODMAN,
Lieutenant-Colonel of Ordnance, Commanding.

Brig. Gen. A. B. DYER,
Chief of Ordnance, Washington, D. C.

APPENDIX XXI.

MOLINE, *Saturday Evening, August* 13, 1870.

SIR: I have the honor to inclose herewith a copy of preamble and resolutions passed at a late hour this afternoon by the board of directors of the Moline Water-Power Company, after a pretty full and free discussion of the subject-matter therein contained.

As far as I know or am advised the members of this company are disposed to meet all questions that may arise between it and the United States in the spirit of fairness and liberality.

I am fully aware that questions affecting the interest of one side or the other may often arise, perhaps oftener than will be entirely agreeable, yet I can see no way to avoid it so long as a condition akin to partnership exists between the United States and the water-power company. I have at times thought it would be very desirable for both sides that a division be made if it could be done satisfactorily, so that each may know his own and the relative position of the other.

I trust the action of our directors will receive at your hands usual deliberation and kind appreciation, and that all questions and matters pertaining to the subject may be speedily adjusted to mutual satisfaction.

I am instructed to say a committee from our board will be pleased to meet you at such time and place Monday as you may indicate.

With much respect, I am, very truly, your obedient servant,

CHARLES ATKINSON,
President Moline Water-Power Company.

General T. J. RODMAN.

Special meeting of the board of directors of the Moline Water-Power Company, held at the First National Bank of Moline, August 13, 1870.

Present: John Deere, S. W. Wheelock, J. M. Gould, D. C. Dimock, J. S. Keator, and Charles Atkinson.

On motion of John Deere, seconded by J. S. Keator, the following preamble and resolutions were unanimously adopted:

Whereas the motives and inducements of this company in making the agreement of April 8, 1869, to cede the right of way to the United States for a canal across their lands and abutting dams thereto, were to secure the early completion and full development of the upper portion of the water-power at Moline, so that, if it should decide at its own expense to build a bulkhead from the wall to the island, it could enjoy continuous use and possession of water-power in order to supply its lessees; and whereas the conditions of said agreement have not been entirely fulfilled on the part of the United States; and whereas this company intends to continue to act in the spirit of liberality and fairness in all its transactions and dealings with the government; and whereas it has full confidence that, while the present commandant, General T. J. Rodman, has charge of the work of developing the water-power at the head of Rock Island (in which the company has so large pecuniary interest), not only the letter but the spirit and understanding of any and all agreements made between it and the United States will be carried out and fulfilled, but the ever-constant changes and liability to change of officers in the military department of the country, and the uncertainties and complications incident to such changes, make it apparent to this board of directors that, in endeavoring to care for and preserve the interests of the stockholders of this company, the policy of the United States, which requires fulfillment of agreements, should be their policy so far as the same can be carried out: Therefore it is

Resolved, That notwithstanding the non-fulfillment on the part of the United States Government of the agreement hereinbefore alluded to, this company is prepared to grant the United States permission to enter upon its premises, upon receiving satisfactory assurances that it will be done, that its adjacent lands be properly protected, that the tail-race shall not be less than two hundred and fifty feet in width on the bottom, and of continuous grade with that portion of the race now being blasted out by this company, that the coffer-dams of the United States shall be so arranged as not to obstruct the use of this company's portion of the water-power, and that additional openings be made for wheels at such points as this company may direct between the lower end of the present wall and the shore, upon which the same is to be abutted.

And it is further resolved, That all agreements relating to ceding right of way, &c., free of cost, was based on the understanding that the dam-wall to be continued to the shore was to be of the same character as that already built, yet this company will make no objection to change of plan that does not impair the value of its interest in the water-power.

CHARLES ATKINSON, *President.*
J. M. GOULD, *Secretary.*

APPENDIX XXII.

ROCK ISLAND ARSENAL, *August* 16, 1870.

SIR: Yours of the 13th instant, inclosing preamble and resolutions of your company, is received, and I tender you and to your company my cordial thanks for the flattering reference to myself therein made.

I have carefully read and considered the preamble and resolutions received, and find them so much at variance with my undertaking of the points referred to that I almost despair of ever being able to arrive at a satisfactory solution of the differences that seem to exist.

I, however, deem it proper that I should state my views as clearly as I can upon the subject, which are as follows:

The original agreement nowhere states either the extent to which the United States were to develop water-power, or the time within which that development should be completed, or the character of the work constituting the development, or the extent to which provision should be made for renting power to your company.

Under the original agreement the United States certainly had the right to prosecute work for the development of water-power at any point or at all points along the line of development, they being only bound to expend the one hundred thousand dollars then appropriated in the manner and at the points therein stated.

The agreement of April 8, 1869, did not in any wise affect or modify the rights of the United States as expressed in the original agreement, except that it bound them to assume, as early the then present season as the stage of water would permit, the development, and prosecute to completion according to the agreement (meaning the original agreement) the upper portion of the water-power and the removal of deposits in the pool, and permit your company to put in a bulkhead and attach it to the island, and build and maintain a wagon-bridge across the tail-race, which was to be of sufficient capacity to carry off the tail-water of such portion of the water-power as your company might use, and build dikes to protect the company's lands against overflow.

But no time within which any of these things should be done is stated, nor is it stated what should constitute completion of the said upper portion and removal of deposits from the pool.

Work has been already commenced and prosecuted in good faith, and, in accordance with said agreement, the upper end of the dam-wall has been completed, including thirty-seven openings, with gates and means of opening and closing them, and a vast amount of sediment removed from the pool.

Your company has been permitted to put in the bulkhead and attach it to the island, and I am now, and have for some time past been, engaged in making a survey of the pool in order to ascertain what amount of deposit still remains in it, and where it is located, with a view to its removal should the War Department deem such removal necessary to the proper development of water-power, or to the fulfillment of existing agreements between that department and your company, and your company has been requested to assist in locating the dike for the protection of their lands against overflow by the water-power pool.

And your company has not been notified by the United States that they held that they had fulfilled the conditions cited in article 3 of the agreement of April 8, 1869.

The first clause of article 4 of the agreement secures to the United States the right to enter upon the lands of your company for the purpose of going on with the work of development of water-power at any time within two years from the date of the agreement, without any other condition than that they were to notify your company that the canal mode of development had been adopted; and it would have been competent to the United States to give your company the required notification and enter upon the premises and prosecute work there contemporaneously with or even before commencing work in fulfillment of the conditions cited in article 3 of said agreement. I gave the required notification, and I therefore claim that the United States did rightfully enter upon and do now rightfully occupy the aforesaid premises.

The second clause of article 4, above referred to, requires the United States to fulfill the conditions cited in article 3 of same agreement before they can claim from your company a deed to the premises. I consider the United States bound in equity to your company to develop to a reasonable extent, and in a reasonable, substantial manner, the water-power which your company conveyed to them, and I have no doubt that they will so develop it, including a reasonable width and depth of canal to carry off the water used by your company, and the removal, to a reasonable extent, of the deposit in the pool; and I think your company should accept the character of the United States Government for fairness and liberality as a guarantee that they will do so. But the extent to which the United States should provide for renting power to your company I consider to be entirely at the option of the Secretary of War.

Article 3 of the original agreement is the only place in either agreement where any provision is made for the utilization of water-power pending the development thereof, and that article binds the United States not to unnecessarily obstruct the use of the

then existing water-power pending the prosecution of work under the then existing appropriation of one hundred thousand dollars, and this has been fully complied with; nor am I aware of the existence of any understanding that the United States should incur any expense in making further provision for the utilization by your company of water-power pending the complete development thereof by the United States.

If your company is willing that the United States should resume work in accordance with the views above stated, I will advise resumption; but if not, I shall refer your letter and inclosed preamble and resolutions, together with this reply and such other papers as may be necessary to a clear understanding of the case, to the Chief of Ordnance for the decision and instructions of the department; and pending the receipt of those instructions, as work was stopped by orders from the Secretary of War at your solicitation, and on your representation that the conditions of the agreement of April 8, 1869, had not been fully complied with, I will not resume work, nor must your company do anything to change the state of things existing between it and the United States at the date of the receipt of the order stopping work, not raising any gates or in any way interfering with the United States water-power or the property belonging to them and being upon the company's land.

I am, sir, very respectfully, your obedient servant,

T. J. RODMAN,
Lieutenant-Colonel of Ordnance, Commanding.

CHARLES ATKINSON, Esq.,
President Moline Water-Power Company.

APPENDIX XXIII.

MOLINE, *August* 19, 1870.

SIR: In accordance with your suggestion to-day to Mr. Wheelock, on consultation the Moline Water-Power Company withdraw their objection to the United States proceeding in the work of development of water-power upon the canal mode of development, consenting to refer matters of difference to the Secretary of War.

CHARLES ATKINSON,
President Moline Water-Power Company.

To General T. J. RODMAN.

APPENDIX XXIV.

OFFICE MOLINE WATER-POWER COMPANY,
Moline, Ill., April 1, 1875.

SIR: Feeling that you may not be familiar with the circumstances attending the transfer of water-power and contracts between the Moline Water-Power Company and the United States, permit me to present for your consideration a brief statement of the general acts and of the claims of the company.

During the season of 1866, prior to the Rock Island commission coming here, General Rodman had made known to the company the desire of government to possess itself of the whole water-power, and when the commission came several interviews were had with myself, acting for the company, and a very full discussion of the whole subject-matter took place; and at an adjourned meeting of the commission, held at Washington, the contract and agreement was consummated, as will appear by the report of the said commission submitted to the Secretary of War February 14, 1867, but the contract was not finally signed until August 16, 1867. It was understood by the company that the development of the water-power meant and was to be such a development as would give the entire power of all the water that could be made to pass through that branch or portion of the river lying between the island of Rock Island and the Moline shore, and requiring, in order to maintain a suitable head of water in the pool, an extended wing-dam of proper height and the entire removal of deposits then in the pool. It is the failure of the United States to perform its agreements that makes it a necessity for this company to call your attention to the matter at this time; and I would also say, in this connection, that this company have always felt that the assumption by the government that it must transfer its water-power possessions to the United States was arbitrary and coercive, and to which it would not have willingly yielded but for assurances of prompt and fair fulfillment of all promises, agreements, contracts, understandings, and obligations.

The failure in regard to wing-dam was that, instead of making it only of proper height to subserve its purpose in low water and extending it as far *up* stream as the appropriation would admit, a very large portion of the money (probably not less than two-thirds) was used in increasing the height and width of the wing-dam at its lower

end entirely above any elevation of the least benefit whatever to the water-power on the Moline side of the island; and this use of the money was made against the repeated protests of the president of the Moline Water-Power Company that it was in direct violation of the whole understanding and agreement as to the way in which this $40,000 should be expended.

It is well known that one of the principal inducements at the time of making the arrangements with the government was the extension of the wing-dam far up the river so as to maintain head in low water; from one and a half to three miles in length was talked about, and never less than the former distance. The commanding officer at the time was arbitrary in his decision as to how this money should be expended, and the company, feeling itself to be without remedy, were obliged to submit. Subsequent to suspension of work on wing-dam, General Rodman spoke of excavating a channel into the pool from the main channel of the river as a substitute for the further extension of the wing-dam (except so far as the excavated material would go.) To this plan ready assent was given by the company, provided deposits were kept out of the excavated channel; but even this plan has not been carried out or any move made in that direction; and as to removal of original deposits, very little, if any, of the $40,000 was used for this purpose. Nothing was done that season in removing deposits at the mouth of the pool. A second leading reason and inducement the company had in making the contract with the government was the removal of those deposits that had accumulated in the pool. This matter was fully discussed between the commission, General Rodman, and the president of the water-power company, and it was distinctly understood and agreed that the government was not only to remove the then present deposits of mud and sand from the pool, but were to keep it clear thereafter, it being agreed that the words "to maintain the power" carried with them the obligation to keep the pool open so that wheels could be fully supplied. It will be noticed that section 6 of commissioners' report provides that neither party shall have the right to obstruct the pool to the detriment of the water-power; yet the government has not only not performed its agreements in removal of old deposits, but has actually placed obstructions across the pool, and suffered the same to remain (and which are not yet removed), and thus help increase obstruction, to the manifest detriment of the water-power. In further consideration of this subject of removal of deposits, I call your attention to a special contract between this company and government, made April 8, 1869, which recognizes and refers in section 3 to the existing agreement to remove deposits in the pool and makes special agreement to remove them that season as soon as the stage of water will permit, and yet it was not done that season, and has remained unaccomplished to this time, although Congress has made appropriation of money to carry out these existing contracts. The company therefore feel justified in complaining of the bad faith of government, that, having received transfer and taken possession of its property, it should continue to withhold fulfillment of its obligations, in consequence of which manufacturers in Moline depending on water-power have, during several of the seasons of low water, been obliged to almost entirely suspend operations for want of power, because water could not get into the pool; and for the same reason they have been obliged to entirely stop for nearly the whole of the past winter, thus, as is seen, materially damaging the interests of this company and placing the water-power in bad credit. The particular causes of complaint are that government has not constructed the wing-dam as was understood and agreed.

It has not excavated a channel into the pond, as was proposed as a substitute.

It has not removed the deposits existing in the pool, as was agreed, and for which appropriations have been made.

It has failed to take away the obstruction that it placed across the pool to subserve its own interests when erecting the dam-wall.

It has failed and neglected to remove deposits that have accumulated since the execution of the original contract, and which are yearly increasing to an alarming extent, and which, if not provided against, must and will, in the nature of things, render the entire power worthless in the common low stages of water in the river.

In assurance that the company have not willingly let this matter be still and go by default, allow me to say that the attention of the commanding officers on Rock Island has been frequently called to the matter, and the company has more than once or twice determined to ask special aid of Congress, but at the solicitation of friends of the arsenal have deferred so asking, for the time, in order not to interfere with or jeopardize the getting of appropriations for the arsenal, hoping and being made to believe its time would come by and by, which now seems afar off.

It has been suggested to this company that the Ordnance Department, and perhaps Congress also, may have regarded the water-power so nearly finished that very little, if any, further appropriations would be needed in this direction. If this be so, it would be well for the Ordnance Department, and Congress also, to be apprised of what is well known here, that very large additional agpropriations of money will be necessary to put the water-power into permanent condition to make it effective for government use and fulfill and keep its obligations to this company, and make it ready for transfer of power to the government shops.

Had a different policy obtained in the original plan of improvement of power and location of shops, as was advised in connection with the use of water-power, there is no doubt a very large part of the past and prospective expenditures could have been avoided, and probably with results just as good, if not really better; but the remedy may be too late now, and whatever policy may be held by the government on these questions, the water-power company cannot perceive why *its* interests, or the interests of large manufacturing establishments, who have been induced (by the known arguments of government) to settle in Moline and become dependent on water-power, or the interests of operatives, who by toil and frugality have secured homes, should be made or permitted to suffer because of this policy or that policy of government, and it is unwilling to believe the government will willingly and knowingly insist in acts of bad faith and knowingly withhold fulfillment of contracts and obligations.

And, finally, the only apology that can be made for troubling you with this communication is the simple fact that this company made a fair contract with the government, after the fullest and most exhaustive discussion; that it has in good faith passed over its property to the United States, and that it now and ever shall insist that the government should fulfill its obligations in letter and in spirit, and regrets that it has not before pressed the matter, as is now proposed to do, before the Ordnance Department and by appeal to Congress, should it become necessary.

I am informed by Hon. I. M. Gould, secretary of this company, who was recently in Washington and had an interview with you on this subject, that you are expecting to be at Rock Island soon, and would probably stay long enough to become familiar with the arsenal and surroundings. I would be glad to know when you will be here, so that I can be at home, as I should be glad to meet you and talk over the matter in question.

With considerations of respect, I am, very truly, yours,

CHARLES ATKINSON,
President Moline Water-Power Company.

To General STEPHEN V. BENÉT,
Chief of Ordnance, Washington, D. C.

APPENDIX XXV.

OFFICE OF THE MOLINE WATER-POWER COMPANY,
Moline, Ill., May 8, 1877.

GENTLEMEN: In behalf of the Moline Water-Power Company, I beg leave to present for your consideration the following statements in regard to questions pertaining to the contract between the United States Government and this company in relation to the development and maintenance of water-power.

As introductory, I would briefly say of the earlier history of the Moline water-power, that it had, under various charters from the State of Illinois, been occupied and used by numerous parties for driving machinery from about 1840 or 1841 to August, 1867, the date of the contract between the Moline Water-Power Company and the United States Government. During that time, a period of twenty-six or twenty-seven years, government fully acquiesced in the possession of the entire water-power by said parties, and at one time during that period granted a lease of a piece of ground on the island for manufacturing purposes for a nominal sum, thus helping to foster manufacturing dependent on water-power already so well begun.

The present Moline Water-Power Company purchased the property embracing this power in 1865, and organized under a special charter granted by the legislature of the State of Illinois, approved February 16, 1865, intending at no distant day to commence and carry out a plan of development that should be adequate to the wants of a manufacturing community.

During the season of 1866, prior to the visit to Rock Island of the commission appointed under acts of Congress approved April 19, 1864, and June 27, 1866, General T. J. Rodman, the then commandant, made known to this company the intention of government to establish large shops for the manufacture of arms and other war material, and to use water-power to propel their machinery, intimating at several different interviews with myself a desire to purchase for the government the company's one-half interest in the water-power, and at one time offered $200,000 for it. As the company could not sell without a breach of faith with persons occupying and connected with the power, it declined considering any offers in that direction. General Rodman then suggested, as government intended to use water-power, and did not want any partnership in development, and would probably desire to make improvements of a more costly character than would come within the means of a private corporation, perhaps some arrangement could be made whereby the government would make the development, and the company have the use in perpetuity of a certain portion.

This was the commencement of negotiations which ultimately resulted in the contracts now under consideration.

The commission referred to came to Rock Island in the autumn of 1866, and negotiations began.

Before concluding anything it adjourned to meet at Washington, January, 1867, at which time an agreement for a contract was entered into, as appears by report of said commission, February 14, 1867. The contract, however, was not signed until August 16, 1867.

Pending this final agreement, the whole subject was very thoroughly and exhaustively discussed, both as to extent of development, removal of existing deposits, maintenance of the water-power, which was understood by all parties to mean keeping the pool open for full supply of water for wheels, as well as preservation of dam-wall and whatever else came with the scope of the words "to maintain."

The subject-matter of an extended wing-dam was also fully discussed and agreed upon as a necessity in development.

It is the failure of the United States to perform its agreements and fulfill its contracts with this company that has made it necessary to ask the intervention of Congress.

The company has always felt that it was an arbitrary assumption on the part of the government in insisting, as it did, that it (the company) must transfer its water-power possessions to the United States, which it certainly would never have done but for the most positive assurances by the commission of prompt and entire fulfillment of all promises, agreements, contracts, understandings, and obligations; the commission adding that the company ought to accept in good faith the promises of government. The first failure of government was in regard to the wing-dam; it was to have been extended up the river, so as to get an increased head. From one and a half to three miles was talked of, never less than the former, and of only such height as was necessary to retain the head in low water; but a very large portion of the first sum agreed upon, viz, $40,000, for an extended wing-dam, was used in building it high and wide at the lower end, and entirely above any elevation of the least benefit whatever to the water-power on the Moline side of the island, and this use of the money was made against repeated protests of myself, as president of the Moline Water-Power Company, that it was in direct violation of the understanding and agreement as to the manner in which this $40,000 should be expended, and in apparent utter disregard of the company's interests.

One special inducement to enter into contract with government was a long wing-dam to increase the head. About the time the $40,000 was said to be used up, General Rodman proposed, as a substitute for the long wing-dam, to excavate a channel into the pool from the main channel of the river, but it was never done, or any move whatever made in that direction; nor was anything done that season in removing deposits from the pool. Another special reason for entering into the contract was the removal of the deposits already accumulated at the mouth of the pool, which was fully discussed and understood between the commission, the commandant, and myself; and it was also agreed and understood that the words "to maintain" carried with them all obligations to so keep the pool open for water to come in that wheels should be fully supplied at all times. Section 6 in original contract provides that neither party shall obstruct pool or water-way to the detriment of the water-power. Yet government has placed a coffer-dam across the pool and suffered a portion of the bottom of it to remain, to the detriment of the water-power. It has also left a large mass of stone at the mouth of the canal, obstructing the outflow of the tail-water in low stage, thus reducing head at the company's wheels. It has also deposited a large amount of stone (for protection) around the piers of the bridge leading from Rock Island to the arsenal, which sooner or later will result in like obstructions.

In further consideration of this subject of removal of deposits, I call your attention to the special contract of April 9, 1869, which recognizes and refers in section 3 to existing agreements to remove deposits in the pool, and the government agreeing therein to remove them that season as soon as the stage of water would permit. This not having been done that season, and remaining yet unaccomplished, the company feels not only justified in charging bad faith on government heretofore, but insists that it should no longer hold possession of property transferred to it by the company without full performance of this special consideration. The non-fulfillment of contracts by government has been extremely embarrassing and damaging to the interests of the company, and also to the interests of manufacturers, who think they ought not to be made innocent victims because government does not fulfill its agreements. As an indication of the embarrassed condition of manufacturers using water-power, I would call your attention to a copy of a letter addressed to myself marked "Exhibit A," under date November 24, 1875.

Prior to January, 1869, discussion had arisen between the company and the commandant as to extent of development required under the contract. The company claimed such development as would give them one-quarter part of all the power that

could be produced from the water that would pass into the pool between the island and main shore with all obstructions removed. Reference was had on the subject by letter to Selden M. Church and General Barnes, two of the commission, for their understanding of the contract; their answers are on file in the Ordnance Department. The particular causes of complaint are that government has not constructed the wing-dam as was understood and agreed.

It has not excavated the channel from deep water into the pool, as was proposed to be done as a substitute.

It has not removed the deposits existing in the pool at the time of making the contract of April 8, 1869.

It has received transfer and taken and holds possession of the company's property without performing the consideration agreed upon.

It has violated the conditions of section 6 of original contract by leaving in the pool a part of the bottom of the coffer-dam, and in the water-way at mouth of the canal a mass of stone which holds back the tail-water and is a positive detriment to the power.

It has failed to maintain the water-power by its neglect to remove the annual accumulations in the pool since the execution of the contracts, and which have increased to an almost alarming extent, threatening at no distant day to make the entire power practically worthless for a considerable portion of the year. The accumulation of deposits at the entrance to the pool cover an extent of over 40 acres, and amount to from 133,000 to 150,000 cubic yards.

The company has been induced to remain quiet under these embarrassments at the suggestion and earnest solicitation of friends of the arsenal, who have feared that its insisting on its special claims might interfere with and jeopardize the getting of appropriations for the arsenal.

It has been suggested that Congress may have regarded the water-power so nearly completed that but little if any further appropriation would be needed for this purpose. If that be so, it seems as if it were but justice to let it be known that a very considerable additional amount is really needed to comply with contracts, to prepare it for government use, and to keep up proper maintenance. It has also been suggested to this company that, it having thus far enjoyed the only use of the already large outlay for water-power, it ought not to complain. In answer to this it is but justice to say that the contract with this company can only be chargeable with one-fourth part of the expenditure down to the lower end of the wall in which are gates for company use. Below that all the expenditures have been made to accommodate and subserve the interests of government alone. And whether these large expenditures by government for water-power have been judicious or injudicious, whether the attempt to create water-power has cost government more than it is worth, or whether government proposes to abandon the use of water-power at Rock Island, as suggested by Mr. Holman, chairman of Appropriation Committee, or not, are matters in which this company has had no voice or control. The dilapidated condition of the water-power during 1875 and the first quarter of 1876 induced the company to propose measures to the Secretary of War, under which the company should expend money in further development to be paid for by government in a lease of power additional to its present rights. The manner of improvement proposed not meeting the views of the Secretary of War as well as plans submitted by Colonel Flagler, the latter was recommended together with an appropriation to carry it out, subsequently indorsed and recommended by Secretary Taft, but without avail, the chairman of Appropriation Committee (Mr. Randall) asserting on the floor of Congress that the money asked for was to benefit private individuals and not the government.

Under date February 19, 1876, the Chief of Ordnance, in his communication to the Secretary of War, says: "It is admitted that the passage to the pool is obstructed." "The government is bound by its agreement (after taking possession of the water-power property) to do the work;" and the fact still exists that these contracts with the company have not been carried out as promised, but which in good faith ought to be, whether profitable to the government or not; and this company cannot further consent to any policy tending to prolong the impairment of its interest or that of manufacturers to whom it has rented water upon the pledged faith of government. At the following session of Congress the same appropriations were recommended with like result. The water-power company and its lessees are so situated that they cannot go backward, and so embarrassed by the course of government that they cannot go forward. The time, therefore, has fully come for investigation of the claims of the company, and the duties and obligations of the government, and also to meet charges of fraud made in public newspapers against the company, as well as the intimations of members of Congress that something was wrong in the premises. It is found by experience that the maintenance of a water-power of low head like this requires much care and expense to keep up head at low stage, and keep deposits out of the pool, as all deposits drawn into and through the pool to the tail-race are more or less detrimental to the entire power; it would therefore seem that a plan devised whereby the heaviest sediment could be kept away from the entrance to the pool proper would be the most

effectual and economical way of maintenance of the water-power so far as deposits are concerned. The action of government in cutting through the "Moline chain" in the interest of navigation has had the effect to materially lower the level of the water at the entrance to the pool when the river is at low stage. This special damage should be specially compensated for. At the time of entering into these contracts the company were told that government would build *its* dam where it was proposed and marked out on the map, which shows the *then* plan of using compressed air; and that it would be soon completed, so that the company could have use of water-power without long delay; but when it was announced that the canal plan or some other plan was under consideration, requiring perhaps *years* of delay (as it did), it became a necessity for the company to have the power, and it was obliged to build a bulkhead at an expense of from $13,000 to $14,000. This expense should in equity have been borne by the United States, because no other plan of utilization or place for dam was presented or considered, and the contract on the part of the company was entered into without intimation of any change that would require this expenditure for temporary bulkhead.

The company were to have use "free from all charge for rent or repairs," yet it has been obliged, in order to keep up the head in low water, to expend not less than $3,500 in getting water into the pools through these deposits. This is "repairs," and should be refunded to the company with interest.

Additional to these expenditures on repairs, the company has been obliged to compromise and make concessions on water-rent, because of insufficient supply, to the extent of from $8,000 to $10,000, which should be made good by government.

The actual damage to the company's interests by reason of the non-performance of government can hardly be estimated, the water-power having fallen into great disrepute, and the impression that it has become almost if not entirely unreliable has kept manufacturers away.

The above, gentlemen, are the principal causes of complaint by this company, and from which it has been embarrassed and greatly damaged.

It hopes, through your report, that such action will be taken by Congress as will result in entire fulfillment of the contracts, agreements, obligations, and understandings, and payment of damage by non-fulfillment thus far, and entire removal of any further cause of complaint.

Reserving the right to at any time amend these papers, this company sincerely trusts that all future questions as to maintenance or development may be satisfactorily adjusted.

With great respect, I am your very obedient servant,

CHARLES ATKINSON,
President.

Generals HUMPHREY, WRIGHT, and ABBOTT,
Commissioners appointed by the Secretary of War
to report upon the Moline Water-Power Company.

APPENDIX XXVI.

MOLINE, ILL., *November* 24, 1875.

DEAR SIR: The undersigned, having knowledge of existing contracts by your company with the United States Government, were induced to invest their capital in buildings and machiney for various manufacturing purposes to be operated by water-power. It is well known to yourself that the water-power relied on to operate our establishments has oftentimes partially, and sometimes, as now, wholly failed by reason of neglect of the government to fulfill and carry out its contracts to develop and maintain the water-power, thus disarranging and disorganizing our business, entailing heavy damage to us and irreparable loss to operatives and their families in our employ.

We therefore feel that the time has fully come when we should unitedly protest against a state of things that so unjustly and unnecessarily impairs and jeopardizes the large manufacturing interests that we represent.

We are aware that large sums of money have been expended by government on this water-power, and that a comparatively small sum will now make the power all that was expected, and without which the expenditures already made avail nothing during a considerable portion of the year.

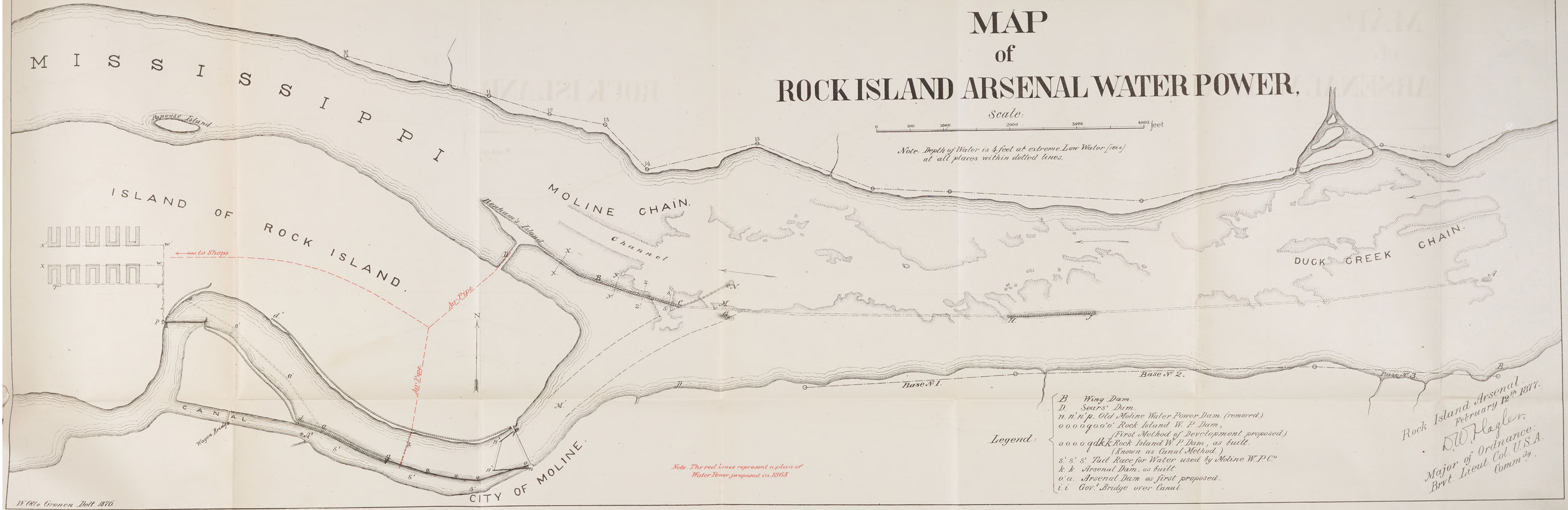
In the efforts you are now making to have Congress investigate the subject, we especially desire that you lay the matter before the Senators and Representatives in Congress from our own State, believing that they will not willingly consent that these large interests shall be jeopardized, impaired, or crushed out when it is so plainly the

MAP
of
ROCK ISLAND ARSENAL WATER POWER,

Scale.

0 500 1000 2000 3000 4000 feet

Note. Depth of Water is 4 feet at extreme Low Water [see] at all places within dotted lines.



Note. The red Lines represent a plan of Water Power proposed in 1865

Legend:

- B Wing Dam.
- D Sears' Dam.
- n n' n' p. Old Moline Water Power Dam. (removed).
- o o o o q o o' o'. Rock Island W. P. Dam, (First Method of Development proposed.)
- o o o o q d k k. Rock Island W. P. Dam, as built. (Known as Canal Method.)
- s' s' s' Tail Race for Water used by Moline W. P. Co.
- k k Arsenal Dam, as built
- o' a. Arsenal Dam as first proposed.
- i i Gov.t Bridge over Canal.

Rock Island Arsenal
February 12th 1877.
D. W. Flagler
Major of Ordnance
Brvt Lieut Col. U.S.A.
Comm.g.

W. H.o Gronen Delt 1876

duty of Congress to interpose and save them by a simple performance of its obligations.

In the hope that success may attend your efforts in this direction, we are

Very respectfully, yours, &c.,

WALTERS & FIRST, employing	8 men.
UNION MALLEABLE IRON CO., employing	40 men.
MOLINE WAGON CO., employing	200 men.
DEERE & CO., employing	500 men.
TILLINGHAST & PORTER, employing	9 men.
S. W. WHEELOCK & CO., employing	50 men.
MOLINE PLOW CO., employing	300 men.
WILLIAMS, WHITE & CO., employing	60 men.

C. ATKINSON, Esq.,
President Moline Water-Power Company, Moline, Ill.

APPENDIX XXVII.

HISTORY OF WING-DAM.

D. B. Sears built a wing-dam about 800 feet long on line A C, of brush and stone, which in 1864 had washed away to about 18 inches above low water. The first plan on file at Rock Island arsenal is dated May 18, 1867, and was approved by the Secretary of War November 11, 1867. This plan shows an extension along the line of the old wing-dam. By an agreement, signed June 18 and August 20, 1867, the United States was required to expend $40,000 on the wing-dam. General Rodman asked authority of the Chief of Ordnance to use the stone excavated from the rapids by the Engineer Department, and to charge it to the wing-dam at the same price as if quarried and delivered for the work, thus making the work worth $40,000, while the actual cost was less. The Chief of Ordnance replied that the water-power company could demand actual expenditures of $40,000. (See letter of General Rodman to Chief of Ordnance of May 24, 1867; Chief of Ordnance to General Rodman, May 29, 1867; General Rodman to Moline Water-Power Company, June 3, 1867; no reply to the last is on the file.) Under agreement with the Engineer Department the stone from the rapids was used on the wing-dam. From Duck Creek Chain 1,720 solid yards were put on the part H I in 1867, and 444 solid yards loosely deposited on Benham's Island. The measurement of this stone was made before excavation. All the stone from Moline Chain was put on the wing-dam at A B C in 1868, about 15,000 solid yards. (See letters from General Rodman to General Wilson, May 26 and June 3, 1867; General Wilson to General Rodman, June 15; Major Edson to General Wilson, November 7 and 13, 1867; Major Allen to Frizell, November 16; Major Edson to Frizell, November 23; Frizell to Major Edson, November 27; Major Allen to Major Edson, December 6 and 9, 1867.)

The part H I was built in November and December, 1867. Soon after the completion of the part (H I), Bailey Davenport asked, officially, what was the object of the work in the river opposite to his land. General Rodman replied, explaining its object. Mr. Davenport afterward agreed to release all claims for damage by overflow by a dam not more than 3 feet high above low water, provided the United States would riprap his shore. On account of this question work was stopped about February 1, 1868, until all land-owners above Moline should make and record such a release for themselves and heirs. (See letters from B. Davenport to General Rodman, December 26, 1867; J. S. Keator to General Rodman, January 2; B. Davenport to General Rodman, January 3, 1868, written, I think, by Henry Curtis, a lawyer of Rock Island; General Rodman to Major Edson, January 18, and to Chief of Ordnance February 6, 1868; J. S. Keator to General Rodman, January 3, 1868.) No such release is on record, and I cannot find out how this matter was settled, but work was again resumed about February 8, 1868, along D E, at a deep hole below Gordon's landing. About 300 feet was built in February and March, 1868, the work having been stopped in March on account of the breaking up of the ice. (See letters of General Rodman to Major Edson, February 8, and Chief of Ordnance to Major Edson, February 8, 1868.) The work was resumed again in July, 1868, and the part A, B, C, D, E was completed by October, 1868. Work resumed again in November, and the part E F completed before April, 1869. (See letters from General Rodman to Major Edson, November 17, 1868; Moline Water-Power Company to General Rodman, November 12; General Rodman to Major Edson, September 9; Major Edson to General Rodman, November 20.)

DETAILS.

Part H I, 1,300 feet long, built in November and December, 1867, by Major Edson then in temporary command of Rock Island arsenal. Plain crib-work, 10 feet from

out to out, made of 6 by 8 pine timbers, fastened by oak pins, filled with loose stone to about 3 feet above low water. The work was done by a foreman (W. H. Anderson), two laborers, and five enlisted men. The stone was from Duck Creek Chain, one mile distant, transported in lighters by Case & Co., and unloaded by Ordnance Department. The cribs were built on lighters and lowered in place. Rate of progress, 80 feet per day. Lumber in 100′=4,300′, at $17 per thousand. Total cost of dam, $1 per running foot. (See letter of Major Edson to General Rodman, November 19, 1867.) The plans not having yet been returned to General Rodman, he declined to make the United States liable for this work. The lumber was furnished by Charles Atkinson, president of Moline Water-Power, who was afterwards to be paid for it by the United States. General Rodman made a proviso that this should not be construed to confer any right of ownership on Mr. Atkinson. (See letters of General Rodman to Major Edson, November 21 and December 3, 1867.)

Part D E, in deep water, was built in February and March, 1868. Cribs of 6 by 8 timbers were built on the ice, and lowered in place, and filled with stone quarried about 1,000 feet southwest of Sear's dam, and hauled in wagons to the wing-dam. A few cribs were made 15 feet wide at the bottom and 12 feet at the top, the latter being on the outside. This was found to be costly, and the rest were made 12 feet wide at the bottom, without batter. (See letters of General Rodman to Major Edson, and Chief of Ordnance to Major Edson, February 8, 1868.)

Part A, B, C, D was built from July to October, 1868; the cribs are 12 feet wide from A to C and 10 feet from C to E. It was not at first intended to cover the cribs over entirely, and a continuous apron 4 feet wide was made for about 600 feet from Benham's islands to prevent underwashing. The timbers are 6″ x 8″, 6″ x 6″, and 8″ x 8″, fastened by oak pins. A rope was stretched from the wing-dam to the coffer-dam, on Moline Chain, and used for a current ferry. The stone was all delivered on lighters by Case & Co., and unloaded by the Ordnance Department. (G. F. Downs was foreman of the work.) Cost per loose yard of stone in position, 39 cents; average cost per running foot of completed dams, A, B, C, D, $800. Part E F was built from November 17, 1868, to January, 1869. An ordinary coffer-dam, made of old boards and filled with earth, was put in and covered over entirely with stone purchased from Charles Atkinson, at $1 per loose yard. The stone was delivered on the Moline shore by Mr. Atkinson and loaded, transported, and unloaded by the Ordnance Department. The water became too high to allow placing the stone. (See letters from General Rodman to Major Edson, November 19, 1868; General Rodman to Major Parker, November 20, 1868; Major Edson to General Rodman, November 20, 1868.) Cost of completed dam E, F, per running foot, $11.

The wing-dam was intended to be one foot above high water for the first 400 feet from Benham's Island to make a log harbor. The next length was to be 8 feet above low water, the next 5 feet above low water to the west line of Bailey Davenport's property, and all east of that line 3 feet above low water. (This line is the prolongation of the east line of the east building of Dinnock & Gould.) After the completion of the dam, a large quantity of the sand and mud excavated from the water-power pool, was deposited along the wing-dam.

OPINION.

It was the opinion of General Rodman that an extension of the wing-dam much beyond Gordon's landing would not be beneficial, as such an extension would necessarily make the mouth of the pool narrower.

It is my own opinion that it would not be advantageous to connect Gordon's landing with the upper part H I, unless the dam would be made more water-tight than it is now.

The mouth of the pool in this case would be but —— wide, and the small increase of head would be nearly compensated by the leakage, and the narrow opening would be liable to be frequently gorged by ice, the river being shallow at the point I.

	Actual expenditures.	Enlisted labor charged to wing-dam.
November, 1867	$270 00	.....
December, 1867	385 15	$252 00
February, 1868	3,403 05	554 93
March, 1868	38 30	.....
July, 1868	701 54	.....
August, 1868	7,274 26	.....
Boats in 1868	1,289 24	.....
September, 1868	6,700 30	.....
October, 1868	3,378 68	.....
November, 1868	3,843 10	.....
December, 1868	978 20	.....
January, 1869	355 20	.....
April, 1869	257 70	.....
Total expenditure	28,874 72	806 93

Respectfully submitted,

W. P. BUTLER,
Second Lieutenant Ordnance.

Official copy.
D. W. FLAGLER,
Major of Ordnance,
Brevet Lieutenant-Colonel U. S. A., Commanding.

APPENDIX XXVIII.

ACCOUNT OF CONSTRUCTION OF WING-DAM.

[Extract from Colonel Flagler's History of Rock Island.]

The action taken by the board of commissioners appointed by the President of the United States to adjust claims growing out of the action of the United States in taking possession of property at the Rock Island arsenal under the act of July 19, 1864, in the case of the Moline Water-Power Company, and the recommendations by the board of a plan for the settlement of matters between the United States and that company, is embodied in the report of the board of commissioners.

The plan recommended by the board was that the Moline Water-Power Company should convey to the United States the fee of the entire water-power. In return for this the United States should develop and construct the water-power and give to the Moline Water-Power Company in perpetuity, free of cost, one-fourth ($\frac{1}{4}$) of all the power obtained, and the privilege of renting at the nominal price of fifty (50) cents per square inch of cross-section of water at openings, per annum, all the water that the United States should not at any time require for use at the arsenal.

This plan has been fully carried out, and the recommendations of the commission are nearly all embodied in contracts made between the United States and the water-power company. Nevertheless a careful reading of the report of the commission on this subject would be useful for a clear understanding of the subsequent action taken respecting it.

The Chief of Ordnance, in submitting the report of the commission to the Secretary of War for his action thereon, made the following remarks in regard to the recommendations in the case of the water-power company:

"ORDNANCE OFFICE WAR DEPARTMENT,
"*Washington, February* 8, 1867."

"SIR: I have the honor to transmit herewith the report of the commission appointed under the acts of Congress approved April 19, 1864, and June 27, 1866, to ascertain the true value of the land on Rock Island taken possession of by the War Department, and the compensation due each claimant.

"You will observe that no award has been made to the Moline Water-Power Company for the improvements made by it in creating its water-power, and as the land upon the island on which the improvements are located belongs to the United States, it is doubtful whether the commission had authority under either of the acts above-named

to award damages to this company, the power to award damages being limited by the acts to claims for the value of the lands owned by individuals and taken possession of by the War Department. Still, as this company was permitted to make these improvements upon public property, it is doubtful whether it should be taken from the company without compensation.

"The recommendation of the commission indirectly gives compensation to the company, and at the same time promotes the interest of this department in securing water-power for the arsenal.

"If the War Department has authority to sanction and carry into effect this recommendation, I respectfully suggest that it be done. If further legislation is necessary to that effect, I recommend that it be requested by Congress as soon as possible."

To carry out the foregoing recommendations, the following resolution of Congress was passed:

"RESOLUTION No 54. (Approved March 2, 1867; vol. 14, p. 573.)

"JOINT RESOLUTION to enable the Secretary of War to carry out an agreement in relation to water-power for the arsenal at Rock Island.

"That the Secretary of war be, and he is hereby, authorized and empowered to carry into effect the recommendations of the commissioners appointed under the acts of April 19, 1864, and June 27, 1866, relative to the Moline Water Company and the water-power at Rock Island, Ill., as contained in the report of said commissioners, and to make application for that purpose of the money heretofore appropriated for securing water-power at the head of Rock Island."

On the 9th of April, 1867, the Chief of Ordnance sent to General Rodman a draught of an agreement for the signature of the Moline Water-Power Company, which embodied the recommendations of the commission.

General Rodman returned this agreement April 16, 1867, and inclosed a copy of a letter from the Moline Water-Power Company, dated April 15, 1867, stating that that company did not think the agreement fully covered all the points recommended by the commission, but the president of the company was authorized to execute the same on behalf of the company, adding the following words:

"It being further understood that this agreement is for the purpose of carrying out the recommendations of the commissioners appointed under the acts of April 19, 1864, and June 27, 1866, relative to the Moline Water-Power Company and water-power at Rock Island, Ill., and that the recommendation of said commissioners, now on file at the Ordnance Department at Washington City, is regarded as part of this agreement."

General Rodman stated that he did not feel authorized to add the clause, but that he could see no objection to its being added.

On April 19, 1866, the Chief of Ordnance returned the agreement with the additional clause inserted, as requested by the Moline Water-Power Company.

One clause of this agreement was again modified in the following June, and before giving a copy of the agreement as finally executed it will be best to explain the circumstances which led to this modification, especially since this modification was the cause of a change in the amount of money expended on the wing-dam, or more properly of the amount of money paid out, and has sometimes caused complaints.

In 1866, Congress appropriated $100,000 for the water-power. It had been agreed, verbally, that $40,000 of this should be expended on the wing-dam and the remaining $60,000 on the stone dam for utilizing the part of the water-power which the agreement gave to the Moline company. There was a clause put in the agreement (third clause) requiring $40,000 to be expended on the wing-dam. The anxiety for this clause on the part of the Moline Water-Power Company was because it was supposed that the wing-dam would give more benefit to the part of the power to be used by that company than it would to the part to be used by the government. Further appropriations would probably be made to complete the dams and other parts of the water-power, in accordance with the plans, but the Moline company did not feel so sure that the wing-dam would be completed in the way that company wanted it, and as they were anxious about it it was made a part of the agreement. It was not convenient to stipulate in the agreement exactly what work should be done on the wing-dam, but the plans for the dam were made and agreed upon verbally, and the estimated cost was carefully determined, and found to be within $40,000. Then the third clause of the agreement was made to specify that this sum of money should be expended, and this covered the case.

Afterward, while the wing-dam was being built, it was found that contractors doing work for the United States Engineer Department in the improvement of the rapids of the Mississippi River were excavating rock from the bed of the river near the site of the wing-dam. Authority was obtained from the Engineer Department to have this rock delivered on the dam. This was done; and the only expense the Ordnance Department incurred in the construction of the rock part of the dam was the cost of unloading

the rock, and a considerable part of this labor was performed by enlisted men. As the largest item in the estimated expense of building the dam was the cost of rock delivered as required, it was found that with this arrangement the dam could be built in accordance with the plan agreed upon for much less than $40,000. General Rodman then proposed to deduct from $40,000 the value of the rock delivered at the dam and expend the remainder, but he was informed by the Chief of Ordnance (under date of May 29, 1867) that this could only be done by consent of the Moline Water-Power Company, and if that company insisted upon it the whole $40,000 would have to be expended upon the wing-dam in accordance with the agreement; but suggested that the agreement (which had not yet been executed) be changed to suit the case. This was done by consent of the Moline company, and the third clause amended to read: "3d. The United States of America hereby agree to apply $40,000, *or so much thereof as the War Department may consider necessary*, to complete the wing-dam," &c., the words underlined being added to the original agreement to make the clause suit the case.

The total amount paid out in the construction of the part of the wing-dam in which the Moline company was interested, in accordance with the foregoing, was $29,681.15. The remainder (a little over $10,000) was reserved, as General Rodman's letters show, for connecting the wing-dam with Benham's Island and Sears's dam, and repairs of Sears's dam.

It has subsequently been claimed by the Moline company that the United States did not carry out this part of its agreement, because the whole $40,000 was not expended on the wing-dam, and complaints have been based upon this claim. On this account a full statement of the matter is given.

APPENDIX XXIX.

Statement of cost of work done on the wing-dam for the Rock Island water-power.

In November, 1867	$270 00
In December, 1867	385 15
In February, 1868	3,403 05
In March, 1868	38 30
In July, 1868	703 54
In August, 1868	7,274 26
In boats in 1868	1,289 24
In September, 1868	6,700 30
In October, 1868	3,378 68
In November, 1868	2,339 77
In December, 1868	978 20
In January, 1869	355 20
In April, 1869	257 70
November 30, 1868, purchased from Moline Water-Power Company 1,503⅓ yards of stone, at $1 per cubic yard	1,503 33
	28,874 72
26,458.62 yards of stone obtained from excavation on Rock Island Rapids improvements, at $1 per yard*	26,458 62
Cost of labor done by enlisted men	806 93
Total cost of wing-dam	56,140 27

As the stone obtained from the Engineer Corps (valued at $26,458.62) and the labor of enlisted men ($806.93) was not paid for by the Ordnance Department, there was left of the appropriation of $40,000 available for the wing-dam $11,125.28, which was reserved, as General Rodman's letters show, for connecting the wing-dam with Benham's Island and Sears's dam, and repairs of Sears's dam.

For full discussion of this matter see extract from Major Flagler's "History of Rock Island" and Lieutenant Butler's report on the wing-dam, papers furnished to the water-power commission.

D. W. FLAGLER,
Major of Ordnance Brevet Lieutenant-Colonel U. S. A., Commanding.

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*This stone was excavated by the United States in the improvement of the Rock Island Rapids and its cost or value to the United States is placed at $1 per yard delivered on the wing-dam, the same price that was paid to the Moline Water-Power Company for stone purchased from that company.

APPENDIX XXX.

Amount of deposit taken from water-power pool.

	Cubic yards.
January, 1869	650
May, 1869	20,360
June, 1869	34,840
July, 1869	28,264
August, 1869	8,500
November, 1869	3,760
December, 1869	25,286
January, 1870	8,907
June, 1870	8,898
Total	139,465
1874	2,300
July, 1869, to October, 1876 (for building purposes)	9,500
	151,265

(The above was furnished by Colonel Flagler May 9, 1876.)

APPENDIX XXXI.

ROCK ISLAND ARSENAL, ILL., *May* 26, 1877.

SIR: I have the honor to state for the information of the commission on water-power that the following amounts were expended by the United States in the improvement of the water-power at Rock Island, viz:

During the fiscal year ending June 30, 1868	$9,429 34
During the fiscal year ending June 30, 1869	179,994 60
During the fiscal year ending June 30, 1870	141,982 96
During the fiscal year ending June 30, 1871	122,064 53
During the fiscal year ending June 30, 1872	180,136 19
During the fiscal year ending June 30, 1873	106,619 59
During the fiscal year ending June 30, 1874	18,000 00
Total	758,227 21

Very respectfully, your obedient servant,

D. W. FLAGLER,
Major of Ordnance, Brevet Lieutenant-Colonel, U. S. A., Commanding.

General H. G. WRIGHT,
Army Building, corner Greene and Houston streets, New York.

APPENDIX XXXII.

WATER RECORD FOR 1874.

Date.	Stage of water.		Head in feet.	Date.	Stage of water.		Head in feet.
	In pool.	In tail-race.			In pool.	In tail-race.	
December 13	8.6	.....	.....	December 23	10.20	6.30	3.90
14	.....	.....	.....	24	10.01	6.30	3.71
15	9.00	6.20	2.80	25	10.06	.....	.....
16	9.50	6.20	3.30	26	10.00	5.80	4.20
17	9.95	6.20	3.75	27	9.40	.....	.....
18	10.55	6.40	4.15	28	9.30	6.00	3.30
19	10.50	5.90	4.60	29	9.95	6.30	3.65
20	10.20	.....	.....	30	10.03	6.20	3.83
21	10.10	6.15	3.95	31	10.35	6.20	4.15
22	10.15	6.20	3.95				

NOTE.—Where no entry has been made, the stage of water in pool or tail-race was below the graduation of the gauge.

D. W. FLAGLER,
Major of Ordnance, Brevet Lieutenant-Colonel, U. S. A, Commanding.

ROCK ISLAND ARSENAL, *May* 26, 1877.

APPENDIX XXXIII.

Water record for the year 1875.

Date.	January.			February.			March.			April.			May.			June.		
	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.
	In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.	
1	10.4	5.9	4.50	10.10	6.50	3.60	.....	.....	.....	14.40	8.90	5.50	19.25	13.35	5.90	14.70	8.60	6.10
2	10.1	6.3	3.80	10.10	6.50	3.60	.....	.....	.....	14.85	9.40	5.45	19.05	13.10	5.95	14.75	8.60	6.15
3	10.5	.....	.....	9.50	6.30	3.20	.....	.....	.....	14.45	9.	5.45	18.70	12.75	5.95	14.60	8.50	6.10
4	10.35	6.2	4.15	7.30	6.00	1.30	.....	.....	.....	14.75	8.55	6.20	18.45	12.25	6.20	14.50	8.50	6.
5	12.9	8.3	4.60	8.70	6.30	2.40	.....	.....	.....	14.10	8.50	5.60	18.10	12.15	5.95	14.40	8.40	6.
6	15.3	7.8	7.50	8.50	6.25	2.25	.....	.....	.....	14.45	8.80	5.65	17.85	11.85	6.	14.20	8.10	6.10
7	15.4	7.8	7.60	9.95	6.00	3.95	.....	.....	.....	17.70	9.05	5.65	17.55	11.55	6.	14.10	8.	6.10
8	14.95	7.5	7.20	8.80	6.70	2.10	8.80	.....	.....	14.70	9.	5.70	17.25	11.30	5.95	13.90	7.75	6.15
9	14.1	7.3	6.80	7.55	6.50	1.05	9.60	.....	.....	14.70	9.	5.70	17.10	11.10	6.	13.85	7.60	6.25
10	14.	6.2	7.80	8.70	6.30	2.40	8.75	6.20	2.55	14.60	8.95	5.65	16.85	10.90	5.95	13.80	7.55	6.25
11	13.85	7.2	6.65	7.30	.....	.....	8.60	5.90	2.70	14.55	8.10	6.45	16.65	10.75	5.90	13.75	7.50	6.25
12	13.6	7.	6.6	.....	.....	.....	7.50	6.20	1.30	14.50	8.65	5.85	16.55	10.60	5.95	13.85	7.60	6.25
13	13.35	7.05	6.30	.....	.....	.....	7.70	6.25	1.45	14.50	8.60	9.90	16.40	10.35	6.05	13.90	7.50	6.40
14	12.95	6.85	6.10	.....	.....	.....	10.50	6.10	4.40	14.55	8.60	5.95	16.20	10.15	6.05	14.	7.70	6.30
15	12.70	6.90	5.80	.....	.....	.....	10.50	6.25	4.25	14.60	8.70	5.90	16.00	9.95	6.05	14.20	7.85	6.35
16	12.30	6.80	5.50	.....	.....	.....	10.40	7.00	3.40	14.80	8.85	5.95	15.85	9.75	6.10	14.30	8.	6.30
17	11.95	6.00	5.95	.....	.....	.....	11.45	7.55	3.90	15.00	8.90	6.10	17.75	9.65	6.10	14.25	8.	6.25
18	11.70	6.60	5.10	.....	.....	.....	11.10	6.75	4.35	15.20	9.10	6.10	15.70	9.60	6.10	14.25	7.85	6.40
19	11.60	6.70	4.90	.....	.....	.....	11.	7.	4.	15.50	9.35	6.15	15.70	9.65	6.05	14.20	8.	6.20
20	11.65	6.75	4.90	.....	.....	.....	10.80	6.60	4.20	15.90	9.70	6.20	15.70	9.65	6.05	14.20	7.90	6.30
21	11.60	6.70	4.90	.....	.....	.....	10.65	5.75	4.90	16.30	10.10	6.20	15.80	9.75	6.05	14.20	7.95	6.25
22	11.50	6.65	4.85	.....	.....	.....	10.25	6.40	3.85	18.85	10.60	8.25	15.85	9.75	6.10	14.20	7.95	6.25
23	11.50	6.60	4.90	.....	.....	.....	8.25	6.05	2.20	17.40	11.10	6.30	15.90	9.80	6.10	14.15	7.90	6.25
24	11.40	5.90	5.50	.....	.....	.....	7.80	5.70	2.10	17.90	11.80	6.10	15.90	9.80	6.10	14.	7.80	6.20
25	11.10	6.60	4.50	.....	.....	.....	8.10	5.60	2.50	18.40	12.20	6.20	15.85	9.85	6.	14.	7.75	6.25
26	11.10	6.70	4.40	.....	.....	.....	9.70	6.80	2.90	18.75	12.70	6.05	15.80	9.75	6.05	14.	7.70	6.30
27	11.	6.60	4.40	.....	.....	.....	10.70	6.	4.70	19.	12.95	6.05	15.65	9.60	6.05	14.10	7.70	6.40
28	10.90	6.70	4.20	.....	.....	.....	14.00	7.	7.00	19.25	13.20	6.05	15.45	9.50	5.95	14.15	7.70	6.45
29	10.60	6.60	4.00	.....	.....	.....	16.35	7.80	8.55	19.35	13.35	6.00	15.30	9.25	6.05	14.20	7.90	6.30
30	10.50	6.70	3.80	.....	.....	.....	12.50	8.60	3.90	19.35	13.40	5.95	15.15	8.90	6.25	14.20	8.00	6.20
31	10.55	6.00	4.55	.....	.....	.....	14.00	8.50	5.50	.....	.....	.....	14.90	8.8	6.10	.....	.....	.....

APPENDIX XXXIII.

Water record for the year 1875—Continued.

Date.	July.			August.			September.			October.			November.			December.		
	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.
	In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race,	
1	14.15	7.90	6.25	10.10	.....	.....	7.80	.....	.....	12.10	5.60	6.50	10.30	.....	.....	.....	.....	.....
2	14.15	7.90	6.25	9.90	6.10	3.80	8.50	.....	.....	11.90	6.	5.90	10.30	.....	.....	.....	.....	.....
3	14.20	8.	6.20	9.80	6.	3.80	8.20	.....	.....	11.60	.....	.....	10.30	.....	.....	.....	.....	.....
4	14.45	8.10	6.35	9.70	5.90	3.80	8.90	5.80	3.10	11.50	5.95	5.55	10.30	.....	.....	.....	.....	.....
5	14.50	8.30	6.20	9.65	5.90	3.75	10.10	.....	.....	11.45	5.90	5.55	10.45	.....	.....	.....	.....	.....
6	14.65	8.50	6.15	9.50	5.80	3.70	10.30	6.80	3.50	11.30	5.60	5.70	10.55	.....	.....	.....	.....	.....
7	14.60	8.45	6.15	9.30	5.80	3.60	10.70	6.	4.70	11.10	5.50	5.60	10.65	.....	.....	.....	.....	.....
8	14.50	8.40	6.10	9.60	.....	.....	10.90	6.40	4.50	11.	5.40	5.60	10.65	.....	.....	.....	.....	.....
9	14.30	7.70	6.60	9.50	5.80	3.70	11.25	6.30	4.95	10.90	5.40	5.50	10.70	.....	.....	.....	.....	.....
10	14.10	7.05	7.05	9.	5.70	3.30	11.70	6.40	5.30	10.90	5.40	5.50	10.70	.....	.....	.....	.....	.....
11	13.80	7.55	6.25	9.45	5.70	3.75	12.40	6.50	5.90	10.85	5.40	5.45	10.70	.....	.....	.....	.....	.....
12	13.45	7.30	6.15	9.30	5.70	3.60	12.65	6.10	6.55	10.70	5.40	5.30	10.70	.....	.....	10.35	.....	.....
13	13.10	6.90	6.20	9.10	5.70	3.40	12.90	6.90	6.	10.60	5.40	5.20	10.65	.....	.....	10.	.....	.....
14	12.85	6.65	6.20	8.80	5.50	3.30	13.20	7.20	6.	10.50	5.40	5.10	10.55	.....	.....	9.60	.....	.....
15	12.50	6.35	6.15	8.70	.....	.....	13.50	7.30	6.20	10.40	5.40	5.	10.40	.....	.....	9.60	.....	.....
16	12.25	6.	6.25	8.65	.....	.....	13.70	7.70	6.	10.50	5.40	5.10	10.40	.....	.....	9.50	.....	.....
17	12.	5.80	6.20	7.70	.....	.....	13.90	7.90	6.	10.40	5.40	5.	10.40	.....	.....	7.25	.....	.....
18	12.80	5.50	6.30	8.70	.....	.....	13.95	7.60	6.35	10.40	5.40	5.	10.10	.....	.....	7.60	.....	.....
19	11.60	5.50	6.10	8.80	.....	.....	14.	7.60	6.40	10.30	5.40	4.90	10.25	.....	.....	10.35	7.10	3.25
20	11.40	5.50	5.90	7.70	.....	.....	14.10	7.80	6.30	10.20	5.40	4.80	10.20	.....	.....	10.10	6.50	3.60
21	11.20	5.45	5.75	8.50	.....	.....	14.	7.70	6.30	10.25	5.40	4.85	10.30	.....	.....	9.40	5.50	3.90
22	11.	5.45	5.55	8.30	.....	.....	13.90	7.60	6.30	10.20	5.40	4.80	10.	.....	.....	9.90	5.55	4.35
23	10.85	5.45	5.40	8.20	.....	.....	13.75	7.45	6.30	10.20	5.40	4.80	6.80	.....	.....	10.10	4.55	5.55
24	10.75	5.45	5.30	7.10	.....	.....	13.60	7.20	6.40	10.20	5.40	4.80	.....	.....	.....	10.	.....	.....
25	10.65	5.45	5.20	.....	.....	.....	13.30	7.	6.30	10.20	5.40	4.80	.....	.....	.....	10.	5.50	4.50
26	10.60	5.45	5.15	7.	.....	.....	13.20	6.50	6.60	10.	5.40	4.60	.....	.....	.....	10.10	.....	.....
27	10.65	5.45	5.20	7.30	.....	.....	12.90	6.60	6.30	10.30	5.40	4.90	.....	.....	.....	10.10	.....	.....
28	10.55	5.70	4.85	7.80	.....	.....	12.70	6.40	6.30	10.20	5.40	4.80	.....	.....	.....	10.10	5.50	4.60
29	10.40	5.80	4.60	8.40	.....	.....	12.45	6.20	6.25	10.20	5.40	4.80	.....	.....	.....	10.10	5.50	4.60
30	10.30	5.75	4.55	8.80	.....	.....	12.20	6.20	6.	10.20	5.40	4.80	.....	.....	.....	10.30	5.50	4.80
31	10.10	5.45	4.65	8.	.....	.....	.....	.....	.....	10.35	5.40	4.95	.....	.....	.....	10.45	5.55	4.90

NOTE.—Where no entry has been made, the stage of water in pool or tail-race was below the graduation of the gauge.

ROCK ISLAND ARSENAL, *May* 26, 1877.

D. W. FLAGLER, *Major of Ordnance, Bvt. Lt. Col. U. S. A., Commanding.*

APPENDIX XXXIV.

Water record for the year 1876.

Date.	January.			February.			March.			April.			May.			June.		
	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.
	In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.	
1	11.25	.....	.....	7.50	5.50	2.	10.20	.....	.....	11.80	5.70	6.10	18.35	11.50	6.85	19.30	12.65	6.65
2	11.95	.....	.....	.....	.....	.....	7.80	.....	.....	13.00	.....	.....	18.25	11.40	6.85	19.30	12.70	6.60
3	12.25	5.75	6.50	7.40	.....	.....	9.90	5.50	4.40	12.40	6.20	6.20	18.40	11.50	6.90	19.10	12.40	6.70
4	12.40	5.80	6.60	8.60	7.40	1.20	10.25	.....	.....	12.85	5.70	7.15	18.50	11.60	6.90	19.85	12.20	7.65
5	12.30	5.80	6.50	10.30	6.40	3.90	10.60	.....	.....	13.10	6.50	6.60	18.80	11.80	7.	18.55	11.80	6.75
6	12.40	5.80	6.60	10.25	6.30	3.95	10.60	.....	.....	13.80	6.80	7.	19.30	11.90	7.40	18.10	11.30	6.80
7	11.70	5.70	6.	8.70	6.10	2.60	11.50	.....	.....	14.40	7.30	7.10	19.25	12.55	6.70	17.65	10.85	6.80
8	11.40	5.70	5.70	7.50	5.50	2.	12.	.....	.....	14.70	7.80	6.90	19.30	12.55	6.75	17.25	10.40	6.85
9	11.40	.....	.....	7.70	5.90	1.80	12.20	.....	.....	14.80	8.	6.80	19.35	12.70	6.65	16.70	9.90	6.80
10	11.50	.....	.....	9.90	5.50	4.40	12.60	6.	6.60	14.80	8.	6.80	19.35	12.70	6.65	16.30	9.45	6.85
11	7.20	.....	.....	10.40	5.80	4.60	13.40	6.50	6.90	15.	8.40	6.60	19.20	12.60	6.60	15.90	8.90	7.
12	.....	.....	.....	10.60	5.85	4.75	14.10	7.	7.10	16.	9.	7.	19.	12.30	6.70	15.65	8.75	6.90
13	.....	.....	.....	10.60	.....	.....	14.50	7.50	7.	17.35	10.30	7.05	18.80	11.90	6.90	15.60	8.70	6.90
14	.....	.....	.....	10.	5.50	4.50	14.70	7.80	6.90	18.10	11.40	6.70	18.35	11.60	6.75	15.70	8.70	7.
15	.....	.....	.....	.....	.....	.....	15.20	8.10	7.10	18.75	12.20	6.55	18.	11.20	6.80	15.55	8.55	7.
16	.....	.....	.....	8.20	.....	.....	15.40	8.50	6.90	19.10	12.70	6.40	17.60	10.80	6.80	15.20	8.20	7.
17	7.20	.....	.....	10.10	5.60	4.50	15.80	9.30	6.50	19.20	13.	6.20	17.45	10.70	6.75	15.10	8.10	7.
18	9.40	.....	.....	8.70	5.50	3.20	16.10	9.70	6.40	19.95	12.75	6.20	17.60	10.50	7.10	14.90	8.05	6.85
19	9.80	.....	.....	9.90	5.50	4.40	15.60	9.20	6.40	19.20	12.90	6.30	17.15	10.45	6.70	14.85	8.05	6.80
20	10.55	5.60	4.95	10.10	.....	.....	15.40	8.90	6.50	19.10	12.85	6.25	17.20	10.50	6.70	14.80	8.05	6.75
21	10.20	5.60	4.60	9.70	.....	.....	15.30	8.50	6.80	19.30	12.90	6.40	17.40	10.65	6.75	14.80	8.	6.80
22	10.60	5.65	4.95	9.30	5.50	3.80	14.30	7.80	6.50	19.20	12.75	6.45	17.50	10.90	6.60	14.70	7.90	6.80
23	10.65	.....	.....	7.80	.....	.....	13.80	7.20	6.60	19.10	12.45	6.65	17.50	11.10	6.40	14.50	7.70	6.80
24	11.	5.75	5.25	.....	.....	.....	13.30	6.50	6.80	19.	12.40	6.60	17.50	11.20	6.30	14.40	7.50	6.90
25	10.75	5.65	5.10	9.40	5.50	3.90	12.80	6.	6.80	18.85	12.20	6.65	17.80	11.35	6.45	14.20	7.25	6.95
26	10.50	5.70	4.80	9.50	5.50	4.00	12.40	5.50	6.90	18.60	12.	6.60	18.10	11.55	6.55	14.20	7.25	6.95
27	10.	5.50	4.50	9.80	.....	.....	12.10	6.	6.10	18.60	11.90	5.70	18.60	11.95	5.65	14.30	7.30	7.00
28	9.70	.....	.....	9.80	5.50	4.30	11.90	5.50	6.40	18.50	11.90	6.60	18.90	12.15	6.75	14.80	7.50	7.30
29	8.60	.....	.....	9.40	.....	.....	11.50	5.80	5.70	18.45	11.60	6.85	19.15	12.40	6.75	14.90	8.	6.90
30	10.20	.....	.....	.....	.....	.....	11.50	5.90	5.60	18.40	11.55	6.85	19.30	12.60	6.70	15.	8.10	6.90
31	10.30	5.	4.80	.....	.....	.....	11.55	5.80	5.75	.....	.....	.....	19.30	12.70	6.60	.....	.....	.....

APPENDIX XXXIV.

Water record for the year 1876—Continued.

Date.	July.			August.			September.			October.			November.			December.		
	Stage of water.			Stage of water.			Stage of water.			Stage of water.			Stage of water.			Stage of water.		
	In pool.	In tail-race.	Head, in feet.	In pool.	In tail-race.	Head, in feet.	In pool.	In tail-race.	Head, in feet.	In pool.	In tail-race.	Head, in feet.	In pool.	In tail-race.	Head, in feet.	In pool.	In tail-race.	Head, in feet.
1	14.90	8.00	6.90	10.60	5.60	5.00	12.80	5.80	7.00	11.60	.....	.....	10.45	5.70	4.75	.....	.....	.....
2	14.90	8.	6.90	10.65	5.60	5.05	13.	5.80	7.20	11.55	5.55	6.	10.50	.....	.....	.....	.....	.....
3	14.90	7.20	7.70	10.65	5.50	5.15	12.65	.....	.....	11.55	5.90	5.65	10.60	5.70	4.90	.....	.....	.....
4	15.05	7.10	7.95	10.65	5.50	5.15	12.30	5.60	6.70	11.50	5.90	5.60	10.75	5.70	5.05	.....	.....	.....
5	15.30	7.10	8.20	10.60	5.50	5.10	11.80	5.70	6.10	11.40	5.85	5.55	10.85	5.70	5.15	.....	.....	.....
6	16.10	8.70	7.40	10.65	.....	.....	11.80	5.75	6.05	11.30	5.90	5.40	10.90	5.70	5.20	.....	.....	.....
7	16.50	9.60	6.90	10.60	5.60	5.	12.90	5.90	7.	11.35	5.80	5.55	11.	.....	.....	.....	.....	.....
8	16.60	10.	6.60	10.60	5.60	5.	13.30	6.10	7.20	11.30	.....	.....	10.95	5.75	5.20	.....	.....	.....
9	16.40	10.	6.40	10.60	5.55	5.05	13.20	5.90	7.30	11.15	5.75	5.40	10.90	5.74	5.15	12.70	6.50	6.20
10	16.10	9.75	6.35	10.50	5.55	4.95	13.50	5.90	7.60	11.10	5.85	5.25	10.90	5.75	5.15	12.90	.....	.....
11	15.70	9.40	6.30	10.50	5.50	5.	13.50	6.30	7.20	11.05	5.85	5.20	10.85	5.75	5.10	12.40	6.90	5.50
12	15.25	8.85	6.40	10.50	5.50	5.	13.50	6.30	7.20	10.90	5.80	5.10	10.90	.....	.....	12.15	6.90	5.25
13	14.70	8.35	6.35	10.50	.....	.....	13.50	6.40	7.10	10.80	5.80	5.	10.90	5.75	5.15	12.10	6.80	5.30
14	14.	7.70	6.30	10.40	5.50	4.90	13.35	6.35	7.	10.80	5.80	5.	10.95	5.75	5.20	12.	6.80	5.20
15	13.35	7.00	6.35	10.40	5.50	4.90	13.	6.50	6.50	10.70	.....	.....	10.80	5.75	5.05	11.85	6.60	5.25
16	12.85	6.10	6.75	10.35	5.50	4.85	12.90	5.80	7.10	10.70	5.80	4.90	10.85	5.75	5.10	11.80	6.70	5.10
17	12.45	6.00	6.45	10.35	5.60	4.75	12.85	5.85	7.	10.60	5.70	4.90	10.90	5.75	5.15	11.90	.....	.....
18	12.30	5.60	6.70	10.40	5.60	4.80	12.60	5.90	6.70	10.50	5.60	4.90	10.90	5.75	5.15	11.70	6.40	5.30
19	12.40	5.70	6.70	10.50	5.60	4.90	12.40	5.60	6.80	10.50	5.60	4.90	11.	.....	.....	11.40	6.80	4.60
20	12.50	5.70	6.80	10.50	.....	.....	12.30	6.00	6.30	10.45	5.60	4.85	11.	5.75	5.25	11.85	6.80	5.05
21	12.50	6.00	6.50	10.40	5.60	4.80	12.15	5.90	6.25	10.30	5.80	4.50	10.95	5.75	5.20	11.80	.....	.....
22	12.30	5.60	6.70	10.30	5.55	4.75	12.10	5.70	6.40	10.60	.....	.....	10.95	5.75	5.20	11.80	6.20	5.60
23	12.10	.....	.....	10.30	5.55	4.75	12.	5.90	6.10	10.50	5.60	4.90	10.85	5.75	5.10	11.50	.....	.....
24	11.75	5.70	6.05	10.40	5.60	4.80	11.90	.....	.....	10.40	5.70	4.70	10.70	5.75	4.95	11.35	.....	.....
25	11.50	5.70	5.80	10.50	5.60	4.90	11.80	5.75	6.05	10.40	5.70	4.70	10.70	5.75	4.95	11.40	.....	.....
26	11.25	5.60	5.65	10.60	5.60	5.00	11.60	5.75	5.85	10.40	5.55	4.85	10.75	5.75	5.	11.30	6.50	4.80
27	11.25	5.60	5.65	10.85	.....	.....	11.60	5.75	5.85	10.40	5.60	4.80	10.45	5.75	4.70	11.	6.60	4.40
28	10.90	5.60	5.30	10.90	5.60	5.30	11.55	5.75	5.80	10.30	5.60	4.70	10.30	5.75	4.55	11.40	6.50	4.90
29	10.70	.....	.....	10.90	5.65	5.25	11.65	5.75	5.90	10.45	.....	.....	8.40	.....	.....	11.30	6.60	4.70
30	10.70	.....	.....	10.90	5.65	5.25	11.65	5.80	5.85	10.35	5.60	4.75	8.30	.....	.....	11.30	6.60	4.70
31	10.65	.....	.....	11.50	5.65	5.85	.....	.....	.....	10.40	5.70	4.70	.....	.....	.....	11.50	.....	.....

NOTE.—Where no entry has been made the stage of water in pool or tail-race was below the graduation of the gauge.

ROCK ISLAND ARSENAL, *May* 26, 1877.

D. W. FLAGLER, *Major of Ordnance, Bvt. Lt. Col. U. S. A., Commanding.*

APPENDIX XXXV.

Water record for the year 1877.

Date.	January.			February.			March.			April.			May.		
	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.	Stage of water.		Head, in feet.
	In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.		In pool.	In tail-race.	
1	11.20	.....	.....	11.80	.....	.....	10.80	.....	.....	12.75	5.60	7.15	13.	6.00	7.
2	11.10	.....	.....	12.70	7.20	5.50	10.90	.....	.....	15.20	7.50	7.70	13.05	6.00	7.05
3	11.	.....	.....	13.05	7.35	5.70	11.	.....	.....	15.50	8.90	6.60	13.10	6.10	7.
4	11.30	.....	.....	13.45	.....	.....	11.	.....	.....	15.30	9.40	5.90	13.10	6.10	7.
5	11.15	.....	.....	13.50	7.50	6.	11.	.....	.....	14.80	9.50	5.30	13.10	6.10	7.
6	11.10	.....	.....	13.65	6.70	6.95	8.90	.....	.....	14.05	8.75	5.30	13.10	5.80	7.30
7	11.10	.....	.....	13.60	6.70	6.90	.....	.....	.....	13.40	7.90	5.50	13.	5.80	7.20
8	10.50	.....	.....	13.40	6.70	6.70	.....	.....	.....	13.	7.25	5.75	13.	5.80	7.20
9	10.50	.....	.....	12.80	6.85	5.95	.....	.....	.....	12.80	7.	5.80	13.	6.00	7.
10	9.40	.....	.....	12.55	6.50	6.05	.....	.....	.....	12.60	6.70	5.90	12.90	6.	6.90
11	10.60	.....	.....	13.25	.....	.....	.....	.....	.....	12.40	6.30	6.10	12.85	5.80	7.05
12	10.	.....	.....	12.40	6.50	5.90	.....	.....	.....	12.30	6.00	6.30	12.80	5.80	7.
13	9.90	.....	.....	12.20	6.40	5.80	.....	.....	.....	12.20	5.70	6.30	12.80	.....	.....
14	10.90	.....	.....	12.20	6.50	5.70	.....	.....	.....	11.90	.....	.....	12.70	6.25	6.45
15	10.80	.....	.....	11.60	6.50	5.10	.....	.....	.....	11.85	.....	.....	12.60	6.20	6.40
16	9.65	.....	.....	11.80	6.40	5.40	.....	.....	.....	11.80	5.90	5.90	12.50	6.20	6.30
17	10.90	.....	.....	11.70	6.00	5.70	.....	.....	.....	11.90	5.80	6.10	12.00	5.80	6.20
18	10.65	.....	.....	12.75	.....	.....	7.50	.....	.....	11.90	5.80	6.10	12.40	5.70	6.70
19	10.70	.....	.....	12.90	8.00	4.90	7.30	.....	.....	12.20	6.	6.20	12.30	5.60	6.70
20	10.40	.....	.....	12.20	7.30	4.90	7.80	.....	.....	12.50	6.	6.50	12.10	.....	.....
21	10.90	.....	.....	12.	6.00	6.	8.00	.....	.....	12.75	5.80	6.95	12.	6.10	5.90
22	10.70	.....	.....	10.70	.....	.....	7.80	.....	.....	12.80	6.	6.80	12.20	5.90	6.30
23	10.	.....	.....	10.90	5.80	5.10	9.40	.....	.....	12.70	6.	6.70	12.	5.90	6.10
24	9.90	.....	.....	10.50	.....	.....	9.30	.....	.....	12.65	5.96	6.70	11.90	5.90	6.
25	10.	.....	.....	10.60	.....	.....	10.15	.....	.....	12.55	5.85	6.70	11.80	5.90	5.90
26	10.	.....	.....	10.55	.....	.....	10.20	5.60	4.60	12.50	5.70	6.80	.....	.....	.....
27	9.80	.....	.....	10.70	.....	.....	10.30	5.60	4.70	12.55	5.60	6.95	.....	.....	.....
28	10.70	.....	.....	10.80	.....	.....	10.60	5.65	4.95	12.65	5.60	7.05	.....	.....	.....
29	10.30	.....	.....	.....	.....	.....	11.40	.....	.....	12.80	5.70	7.10	.....	.....	.....
30	9.80	.....	.....	.....	.....	.....	11.70	5.75	5.95	12.90	5.90	7.	.....	.....	.....
31	10.90	.....	.....	.....	.....	.....	11.85	.....	.....	.....	.....	.....	.....	.....	.....

NOTE.—Where no entry has been made the stage of water in pool or tail-race was below the graduation of the gauge.

ROCK ISLAND ARSENAL, *May* 26, 1877.

D. W. FLAGLER, *Major of Ordnance, Bvt. Lt. Col. U. S. A., Commanding.*

APPENDIX XXXVI.

ROCK ISLAND ARSENAL, ILL., *June* 13, 1877.

SIR: I have the honor to acknowledge the receipt of your letter of June 2, 1877, stating that "amongst the alleged grievances of the Moline Water-Power Company are the following: It has violated the conditions of section 6 of the original contract, by leaving in the pool a part of the bottom of the coffer-dam, and in the water-way at mouth of the canal a mass of stone which holds back the tail-water and is a positive detriment to the power," and asking for a statement of facts from me in writing in reply to these complaints.

Respecting the complaint that a portion of a coffer-dam was left in the pool, I have to state as follows:

This complaint was stated more fully in a letter dated April 1, 1875, from the president of the Moline Water-Power Company to the Chief of Ordnance, and I believe your commission has a copy of the letter.

It was referred to me for report, and I believe your commission has also a copy of my report dated May 6, 1875. Respecting this complaint, I stated in the report, as follows:

"The site of the old coffer mentioned above is supposed to be what Mr. Atkinson calls the obstruction put in by the United States. This old coffer was reported to have been thoroughly removed while General Rodman was in command of the arsenal. The soundings made at the time of the dredging mentioned here; the dredging and subsequent observation convince me that the coffer is so thoroughly removed that it is *not* an obstruction."

The coffer-dam referred to crossed the pool about 200 yards east of the present site of the arsenal bridge to Moline, and was put there in 1868, pending the construction of the upper water-power dam wall. It was removed before I came to the arsenal, but as long ago as 1872 the water-power company complained to me that the coffer had not been thoroughly removed, and at that time there were officers stationed at the arsenal who had been here when the work was done. They informed me verbally that the removal of the coffer had received a good deal of attention; that the officer who superintended the work reported the coffer thoroughly removed, and that General Rodman had examined the work, and he also stated that the coffer had been thoroughly removed.

I however made soundings, but could not find enough remains of a coffer to form an "obstruction" to the pool.

The cross-section of the pool at this point was so much greater than at the head of the pool, that a large amount of material might have been left in the pool and still form no obstruction to the flow of the water. That is, if at extreme low-water all the water that could get in at the head of the pool were drawn out at the dam, the water was so deep over the site of the old coffer that if any material was left there it had no effect, and left the surface of the water level. Subsequently, I think in the winter of 1873 and 1874, a temporary gorge of ice formed across the head of the pool, and so effectually dammed the water out of the pool that I was able to examine the site of the old coffer thoroughly, and found that, although the coffer had been dredged out, the work had been done with a scoop-dredge, and some of the material had been pushed forward of the scoop and left along the sides of the site of the old coffer.

In the summer of 1874 I went over all the ground again with a dredge very thoroughly, and took out all that could be obtained with any regard to good sense and economy. The material that I took out was mainly loose stones and earth that had been placed along the sides of the coffer to strengthen it when it was in use. With a scoop-dredge, working on a rough rocky bottom, it is nearly impossible that such material should be taken out perfectly clean, because it pushes and rolls in front of the scoop.

The work was, however, well and thoroughly done. I have made many careful soundings since, and cannot find that any considerable amount of material is left.

What has already been stated should be borne in mind. The site of this old coffer is in a deep part of the pool compared with the depth at the head of the pool. The water always stands level over this part of the pool, and the material, if any, left lying at the bottom is not at all an injury or an obstruction to the pool in the sense which the words are intended to convey.

Respecting the other complaint, that the United States has left "in the water-way at the mouth of the canal a mass of stone which holds back the tail-water, and is a positive detriment to the power," I can only state that I do not know what the complaint means, and cannot answer it.

This part of the work was done under my command, and a mass of stone was not left in the mouth of the canal, and none has been put there since the canal was completed.

I have on file very complete drawings and descriptions of all this part of the work, and can without trouble, and would be glad to, furnish any information the commis-

sion may desire; but the complaint gives me no clew to what is meant, and, so far as I know, it is without foundation.

Very respectfully, your obedient servant,

D. W. FLAGLER,
Major of Ordnance, Brevet Lieutenant-Colonel, U. S. A., Commanding.

Lieut. Col. H. G. WRIGHT,
United States Engineers, Army Building, New York.

APPENDIX XXXVII.

FIRST DAY.

WASHINGTON, D. C., *April* 21, 1877.

The commission met at 11 a m.; present, all the members. Colonel Lyford, acting for Chief of Ordnance in his absence, laid before the commission certain maps and documents relating to contract between the United States and the Moline Water-Power Company. After examination and an informal discussion of the subject, the commission adjourned to meet at Rock Island Arsenal on May 4, 1877, or as soon thereafter as practicable.

HENRY L. ABBOT,
Major of Engineers (Recorder).

SECOND DAY.

ROCK ISLAND ARSENAL, 10 *a. m., May* 4, 1877.

The commission met according to adjournment; present, all the members. Colonel Flagler, commanding Rock Island Arsenal, laid before the commission an indexed file of letters and papers pertaining to the water-power contracts, and detailed maps and drawings relating thereto. He then verbally explained the history of the water-power at Rock Island from its earliest development to the present state.

The commission then proceeded to visit the works in company with Colonel Flagler, examining the whole minutely.

At 3 p. m. the commission reassembled, and, after further consideration of the subject, adjourned at 4.30 p. m.

HENRY L. ABBOT,
Major of Engineers (Recorder).

THIRD DAY.

ROCK ISLAND ARSENAL, 10 *a. m., May* 5, 1877.

The commission met according to adjournment; present, all the members. The systematic reading of the abstract of the correspondence supplied by Colonel Flagler, was begun, and notes thereof duly taken.

The commission adjourned at 5.15 p. m. to meet on Monday next 9.30 a. m.

HENRY L. ABBOT,
Major of Engineers (Recorder).

FOURTH DAY.

ROCK ISLAND ARSENAL, *May* 7, 1877.

The commission met pursuant to adjournment at 9.30 a. m.; present, all the members. The preliminary reading of the documents was completed, and the second reading of those marked as pertinent and important was begun. A letter was addressed to Mr. Charles Atkinson, president of the Moline Water-Power Company, requesting him to meet the commission in person or by a legal representative at 10 a. m. to-morrow.

At 5 p. m. the commission adjourned until to-morrow at 9.30 a. m.

HENRY L. ABBOT,
Major of Engineers, Brevet Brigadier-General (Recorder.)

FIFTH DAY.

ROCK ISLAND ARSENAL, *May* 8, 1877.

The commission met pursuant to adjournment; present, all the members. Mr. Charles Atkinson appeared before the commission and made a full statement of the case of the company. After a verbal statement concerning the early history of the Rock Island water-power, he read his letter of April 1, 1875, to the Chief of Ordnance; the contract made between the United States and his company in 1867; the contract made between the same parties in 1869; Judge Church's letter explanatory of his views of the contract, dated January 20, 1869; and a letter addressed to himself by the owners of the manufacturing works using the power, dated November 24, 1875. Upon these documents, with verbal explanations, he rested his case for to-day.

The commission requested him to supply: First. A copy of the charter of the company from the State of Illinois. Second. The date of transfer of the property to the present company from its New York owners, who had obtained it from Pitts, Gilbert & Pitts, who had obtained it from D. B. Sears and associates, who obtained the first charter in 1837 and developed the power about 1842. Third. The number of days in each year for several successive years in which the power fell short of the needs of the company, and the amount of such deficiency. Fourth. A statement of any grievances in addition to those enumerated in his letter of April 1, 1875, to the Chief of Ordnance, or, if preferred, a new statement of grievances. Fifth. The amount of power actually in use by the company when supplied with all the water desired. At Mr. Atkinson's suggestion an invitation was extended through him to the prominent manufacturers at Moline to appear before the commission and submit their views to-morrow at 11 a. m. General Henderson, Representative from the Moline district in Congress, appeared before the commission, and stated that he drew the resolution under which the commission is acting, and that it was not designed to impute negligence to the Ordnance Department, but that its object was simply to inform Congress of the just claims of his constituents.

The commission then resumed the second reading of the more important of the documents submitted bearing upon the subject-matter under consideration, and, after completing the same, adjourned at 5.15 p. m. to meet at 9.30 a. m. to-morrow.

HENRY L. ABBOT,
Major of Engineers, Brevet Brigadier-General (Recorder).

SIXTH DAY.

ROCK ISLAND ARSENAL, *May* 9, 1877.

The commission met at 9.10 a. m., pursuant to adjournment; present, all the members. The subject of water-gauges and stages of water was studied from the data presented by Colonel Flagler.

At 11 a. m., the following gentlemen, representing the manufacturing interests of Moline, appeared before the commission: J. S. Keator, Judge Gould, secretary of the Moline Water Company; John Deere, S. W. Wheelock, S. Vielie, James Atkinson.

These gentlemen engaged in conversation with the commission, and generally agreed to the following statements of facts:

The three principal manufacturing companies of Moline are the Moline Paper Company, using from 200 to 250 horse-power, and provided with 100 horse-power steam-engine; Deere & Co., using 250 horse-power, and provided with 100 horse-power steam-engine; Moline Plow Company, using 200 horse-power, and provided with 100 horse-power steam-engine.

There are 15 wheels in use, at about 50 horse-power per wheel = 750 horse-power. They agree in estimating that for an average year, at present, there are three months with no useful power available; three months with half horse-power—*i. e.* 375 horse-power, and six months with 750 horse-power, which is all they desire, or more. Their contracts with the Moline Water-Power Company are that full price shall be paid for the power down to three pounds head; for less than that nothing is paid. After further studying the maps and data presented by Colonel Flagler, and discussing them with him, the commission visited the shops and water-power of Deere & Co., and Moline Plow Company, and returning adjourned at 5 p. m., to meet to-morrow at 9.30 a. m.

HENRY L. ABBOT,
Major of Engineers, Bvt. Brig. General (Recorder).

SEVENTH DAY.

ROCK ISLAND ARSENAL, *May* 10, 1877.

The commission met pursuant to adjournment at 9.15 a. m. A letter was addressed to Colonel Flagler requesting him to mail to General Wright's address in New York the following data:

I. Copy of report of Lieut. W. B. Butler, dated February 12, 1872, upon the construction of the wing-dam, with the accompanying tracings.

II. The additional facts respecting cost of same, value of stone received from Engineer Department, labor of enlisted men, &c.

III. Plot of oscillations of river at the bridge from 1860 to 1877.

IV. Detailed record showing head of water available for Moline Water-Power Company for as long a period as possible. The copy of General Schofield's views as to the meaning of the report of the commission of 1867, requested from the Chief of Ordnance, was received from Washington and submitted by Colonel Flagler. The commission remained in session, waiting for Mr. Charles Atkinson, uniil 3.30 p. m.; as he did not appear, and Colonel Flagler having consented to forward any further documents which he might present, the commission adjourned at 3.30 p. m., to meet at the place and time designated by the president.

HENRY L. ABBOT,
Major of Engineers, Bvt. Brig. General (Recorder).

EIGHTH DAY.

NEW YORK CITY, *June* 13, 1877.

The commission met at 10.30 a. m., pursuant to a call of the president; present, all the members. The draught of the final report was discussed and adopted after an examination of certain notes and plottings of gauge-record received from the commanding officer at Rock Island arsenal.

The commission then adjourned *sine die* at 3.15 p. m.

HENRY L. ABBOT,
Major of Engineers (Recorder).

WATER-POWER AT ROCK ISLAND ARSENAL.

WAR DEPARTMENT,
Washington, D. C., February 19, 1876.

SIR: I have the honor to transmit, for the consideration of Congress, a communication from the Chief of Ordnance, inclosing a report by the commanding officer, Rock Island arsenal, asking for an appropriation of $157,350 to complete the development of the water-power.

The agreement entered into by my predecessors under the joint resolution of Congress of March 2, 1867, makes it the duty of the United States to carry out this work to completion, and the interests of private parties require that the work should be done as speedily as possible. The whole appropriation asked for would enable this department to complete the work and afford the relief called for in a few months, and thus fulfill the engagements entered into by the United States.

Should the full amount not be appropriated, as asked for by the Chief of Ordnance, the sum of sixty thousand dollars at least should be given, in order to enable the department to make progress in the work.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

To the SPEAKER HOUSE OF REPRESENTATIVES.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, February 17, 1876.

SIR: I have the honor to transmit herewith a report of Maj. D. W. Flagler, commanding Rock Island arsenal, showing the necessity for an appropriation for completing the development of the water-power.

The agreements made by the United States with the Moline Water-Power Company bind the former under the obligations hereinafter stated.

1st. Proceedings of Rock Island commission of January 24, 1867 (Executive Document 27, Senate, 2d session 39th Congress), which requires "the government to develop and maintain the power, so far as it can be done with the money heretofore appropriated, or that which may hereafter be appropriated by Congress for that purpose. The Moline Water-Power Company to have the use in perpetuity * * * of one-fourth of the entire water-power developed. * * *

2d. Agreement with the Moline Water-Power Company, signed by General Grant, Secretary of War *ad interim*, and Charles Atkinson, president water-power company, August 20, 1867, in which the company convey their "entire water-power" and the free use of so much of the bed of the river as may be required "for the further development of said water-power."

The Moline company be granted the free use of "one-fourth of their entire water-power above conveyed." The United States agreeing to apply "$40,000, or so much thereof as the War Department may consider necessary, to complete the wing-dam," &c.

3d. Agreement between the Moline Water-Power Company and Secretary Rawlins, dated April 8, 1869, which stipulates that the United States shall "resume * * * the development and prosecute to completion, &c., the upper portion of the water-power and the removal of the deposits in the pool."

Upon this subject Major Flagler, in his report of May 6, 1875, to the Chief of Ordnance, says: "I certainly believe that the obligations of the United States set forth in these papers have been thus far properly discharged, and somewhat liberally discharged, in the benefit conferred upon the Moline Water-Power Company, and that you should not feel that injustice had been done to this company by the United States. The government has certainly bound itself to develop and maintain the water-power What this development and maintenance shall be is not exactly set forth, and has

caused, and probably always will cause, discussion, because only one party to the benefits to be obtained has to expend the money for them." And further, it is a nice question to decide to what extent the development and maintenance shall go on, and whether the government, which pays the expenses thereof, shall not be the judge of the manner and quality of such development and maintenance. At any rate, the action of this department is limited by the appropriations, and I have no doubt that full justice has been done to the interest of the Moline Water-Power Company. The necessity for further appropriations is apparent, and this bureau has estimated for the next fiscal year, as follows:

(Book of Estimates, page 124.)

"Improvement of the water-power.....$60,000

"NOTE.—This estimate is for opening a channel in the rock bed of the river and improving the wing-dam, to increase the amount of water flowing into the water-power pool during low water."

This sum, however, is not sufficient to complete the work as wisdom and economy demand that it should be done, as is shown in the report transmitted herewith.

The Moline Water-Power Company feel aggrieved because the quantity of water at its disposal is not sufficient. It is admitted that the passage to the pool is obstructed, and that to give the Moline Water-Power Company and the United States the full benefit of the development already made, measures must be taken to cause a sufficient flow of water into the pool to supply the necessary power. The government is bound by its agreement (after taking possession of the water-power property) to do this work, and in the interest of the two parties interested, for economy, and particularly for the protection of valuable interests to the United States, the work should be done now, and the entire amount, $157,350, should be appropriated.

Two methods are proposed for doing this work. Major Flagler's report, transmitted herewith, fully proves that the proper way to effect the object is by carrying out the plan proposed in that report, that it will for the least money satisfy most of the conditions and give all the water necessary for the company and the United States, and make provision for dredging out the channel, and at all times keep the work in working condition. This plan, No. 2, is therefore approved and recommended, and the money required, $157,350, should be asked from Congress at the present session.

This matter is respecfully recommended to the honorable Secretary of War for favorable action, and that it be brought to the attention of Congress.

Very respectfully, your obedient servant,

S. V. BENÉT,
Brigadier-General, Chief of Ordnance.

The honorable the SECRETARY OF WAR.

REPORT OF MAJOR D. W. FLAGLER.

ROCK ISLAND ARSENAL, ILLS., *February* 4, 1876.

SIR: Referring to my letter to you, dated May 6, 1875, respecting the deposits at the head of the water-power pool at this arsenal, the difficulty of getting a sufficient supply of water into the pool, complaints of the Moline Water-Power Company, &c., and to the item of $60,000 in my annual estimate for the fiscal year ending June 30, 1877, for prosecuting the development of the water-power by making provision to admit the necessary amount of water into the pool, I have the honor to submit, for your information and consideration, the following calculations and remarks:

The following is the amount of water required for the water-power for which a water-way into the pool should be provided:

Provision should be made to furnish to the United States at least 2,000 horse-power.

The best plant of water-wheels, pen-stocks and machinery cannot utilize more than 78 per cent. of the power of the water. At low water the head at the dam is 7 feet. This would require for the use of the arsenal 3,234 cubic feet of water per second,

$$\frac{2{,}000 \times 550}{0.78 \times 62.3 \times 7} = 3{,}234.$$

The contract made with the Moline Water-Power Company requires that one-third as much more be provided for the use of that company. This makes the total amount required 4,312 cubic feet per second. I think it best to put this amount at 4,400.

It is the object of this paper to determine the best method of getting this amount of water; that is, of getting it from the river into the pool. As explained in my letter of May 6, 1875, the water cannot get into the pool now because of obstructing rocks

and deposits of mud and sand. The removal of these deposits would be very expensive, is nearly impracticable, and would not be effectnal in producing much lasting good.

It is, therefore, necessary to provide some other way.

Whatever plan is adopted, it should possess as many of the following requisites of a good plan as is practicable:

1st. It should be as economical as may be.

2d. It should be effectual.

3d. It should be such as will prevent future deposits of sand and mud, or such as will admit of the easiest and most economical removal of these deposits, which, unless prevented, must contiuue forever.

4th. The development of this part of the water-power must be such as not to prevent a future increase of the water-power, but should be such as to make such an increase as easy and economical as may be.

The future manufacturing interests of this community, and the probable future wants of this great arsenal, make attention to this last requisite important.

After discussing the only two plans of development that are proposed, and making calculations and estimates for them, it will be well to see how far each fulfills the above requirements.

FIRST PLAN, OR THAT OF BUILDING A LONG WING-DAM UP THE RIVER.

You are aware that the president and members of the Moline Water-Power Company have advocated the building of a long wing-dam up the river. The proposed location of this dam is shown by a red line on the accompanying map, marked "A."

It is claimed for this plan that, by running the head of the dam into deep water, it will give so large a cross-section at the head of the pool (A B on map) that enough water will always enter the pool, and that, also, this dam will raise the water in the pool nearly to the height of the river at the head of the dam. The level of the river at the proposed head of the dam (A B on the map) is 1.6 feet higher than at the present head of the pool (C D on the map). It is further claimed that this increased height would carry the water over the obstructions which are now at the head of the pool, thus remedying the present evil, besides giving an increased head and a large increase of power at the water-power dams.

I have been unwilling to adopt this plan until after a thorough examination and study of this part of the river could be had.

It will be readily understood that this plan, instead of making a pool all the way to the head of the proposed wing-dam, would substantially make a canal between the wing-dam and the Illinois shore, down which all the water for the water-power would have to be brought. This canal would be more than two miles long and generally about 900 feet wide. The water in all this part of the river is shallow. I have been afraid from the first that to get enough water to flow down this long shallow canal so much fall in the surface of the water would be required that nearly all—all or more than all—of the increased head, viz, 1.6 feet, would be consumed in this way; that is, that the slope of the surface of the water in the canal would be greater than outside in the river. If this were so, then at low water the wing-dam would dam the water out of the pool; the water in the pool would be lower than it is now; none of the benefits claimed for the plan would be gained; but great damage would be done.

During the last two years I have given much attention to this subject.

Last fall I finished complete soundings and measurements of all this part of the river. These soundings are numerous and accurate, embracing in all about 15,000 soundings. From them I have made cross-sections of the proposed canal, 200 feet apart, throughout its whole length, and from these cross-sections determined the capacity of the canal. The canal at low water would have an average depth of not much more than 1.2 feet.

Obstructions and the uneven bottom would produce eddies and *contractions*. I have, from a study of the cross-sections, determined as nearly as possible the form of bottom and sides of a canal of equal capacity for *flow*, but of a uniform cross-section at low water, and have calculated the *flow* in the latter. Of this canal the area of cross-section would be 980 square feet; the length of *wet perimeter*, 880 feet (approximately); length of canal, 12,500 feet.

(*a*) To discharge 4,400 cubic feet per second through this canal, the required fall is determined by calculation to be $26\frac{5}{10}$ feet; that is, it would be impossible.

$$\frac{\text{(a) Fall in feet}}{12{,}500} = \frac{\left(\frac{4400}{980}\right)^2 \times 880 \times .0001114}{980} + \frac{\frac{4400}{980} \times 880 \times .00002426}{980}$$

Fall in feet = 26.50.

(*b*) If we suppose the fall in the canal to be same that it is in the river outside—viz, 1.6—the canal would discharge 1,001 $\frac{78}{100}$ cubic feet per second, representing at the upper dam 907 $\frac{8}{10}$ horses' power. To get even this we would still have to clear a channel through the rock and mud at the head of the pool.

(*c*) With the stage of water 1 foot above low water to discharge 4,400 cubic feet per second, there would be required a fall of 3.598 feet, leaving the water in the pool still nearly 2 feet lower than the river outside. With this stage of water, the wing-dam would still injure the water-power, if the maximum amount of water for which the water-power was built (4,400 cubic feet per second) were required.

With the stage of water 1.45 feet above low water, to discharge 4,400 cubic feet per second, the required fall in the canal would be 1.6 feet, the same as in the river outside, and no damage would be done by the wing-dam. As the river rises above this stage, the wing-dam, if built high enough, would begin to be beneficial.

It is to be remembered, however, that the supposed improvement is only desired or needed at low water. If the determined cross-section of the canal is correct, or anywhere near correct, then the calculations prove positively that at low water the wing-dam would dam the water out of the pool and effectually destroy the water-power.

Nor is this the principal injury that the wing-dam would effect. From the instant that it is completed the deposits in this channel must commence. It is impossible that the deposit should be less than it is now; and, even if the canal were a good one to begin with, sooner or later it must be filled up, precisely as the head of the pool is now. Then, instead of having, as we have now, the objectionable difficulty of clearing out a channel 2,400 feet long through the mud and rock, we should have the increased difficulty of clearing out and keeping clear a similar channel of 12,500 feet, or nearly 2½ miles, long. The expense of this last undertaking would make it impracticable.

Moreover, the deposit must be much *greater* than it is now. We have now the deposit only from the still water that comes into the pool. The wing-dam would give us additional deposits from the other water that does not come into the pool. It is proposed to build the wing-dam to a height of not more than 3 feet above low water. At higher stages, when the water is most charged with sediment, the river is to flow over this dam. It will then be like any other obstruction at the bottom of the Mississippi that causes a bar to form above and below it. The fillets of water below the level of the top of the dam will have from little to no current; will receive a portion of the sediment from the running water above, and being too sluggish to carry it away, will deposit it. I believe the deposit abstracted from this water which we would not use, and from which we would get no benefit, would be more than we now get from the water which comes into the pool and which we do use.

Some plans are proposed for washing out this deposit. They might mitigate the evil, but that they would succeed sufficiently to keep the water-power in operation at low water is, I believe, subject to grave doubt.

COST.

To build the dam to the height of 3 feet above low water, of loose rock dumped in the river (the cheapest construction), would require, according to my estimate, 75,000 cubic yards, and cost $225,000.

It has been proposed to deepen the canal between the wing-dam and the shore, increase its cross-section, and thus avoid the evil of injuring or partially destroying the water-power at low water, as shown by the calculations herein, and to use the rock thus obtained for building the wing-dam.

This would be effectual, and is, on a larger scale, substantially the same as the other plan proposed; but to do it, it would be necessary to coffer and pump out all of this part of the river. The expense would be very great and incompatible with the benefit obtained. The increased deposit, described on the preceding page, would still obtain. It is true that the excavation would give a smooth channel which might be dredged' but instead of having a lesser amount to dredge from a channel 2,400 feet long, there would be a larger amount to dredge from a channel 12,500 feet long.

To make this channel at all valuable, that is, to deliver the required 4,400 cubic feet

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(b) Discharge per second $= 980\left(\sqrt{\frac{980 \times \frac{1.6}{12{,}500} \times 8975}{880}} - 0.1089\right) = 1001.78$ cubic feet per second.

$$\frac{1001.78 \times 62.3 \times 7 \times \frac{80}{100}}{550} = 907\,\tfrac{8}{10} \text{ horse-power.}$$

$$\frac{\text{(c) Fall in feet}}{12{,}500} = \frac{\left(\frac{4400}{1880}\right)^2 \times 880 \times .0001114}{1880} + \frac{\frac{4400}{1880} \times 880 \times .00002426}{1880}$$

Fall in feet = 3.593.

per second and increase materially the hight of water in the pool, would require at low water that the excavation clear a channel 4 feet deep and 800 feet wide. This channel would require a fall of .53 foot and save 1.07 feet of head. Its cost would probably exceed $750,000.

If this plan of excavating is abandoned on account of its cost, I should say then that at low water the wing-dam would injure the water-power; that if provision is to be made to bring into the pool the required 4,400 cubic feet per second, then the wing-dam would injure the water-power for any stage of water less than 2½ feet above low water; that in any case it would multiply the difficulty and cost of keeping the water-power in good condition; that it would benefit the water-power when the stage of water is 3 feet above low water and the benefit is not needed, because then it can be obtained by other inexpensive means; that at stages of water between 1 and 3 feet above low water, if the arsenal is using little or no water and the Moline Water-Power Company is using only about 750 horse-power, then that company would get material benefit from the plan in increased head, provided that the United States keeps the water-power in order.

SECOND PLAN.

The other plan proposed is to excavate a channel from deep water near the head of the wing-dam now built down through the pool until deep water is reached. (See MM′ on the map.) It is proposed to make this channel 400 feet wide, 3½ feet deep, about 2,400 feet long, and to use a portion of the rock obtained in extending the wing-dam now built about 500 feet (shown on map) up stream and out into deep water. This extension of the wing-dam would be into deep water where the current is rapid, and should turn a part of the current into the pool, and would raise the water a few inches at this place. I estimate this raise at .32 foot, which would give a little more than 3.8 feet of water in the channel excavated.

As has been stated, there is now a deposit of mud and sand over all the head of the pool which dams the water out of the pool. Underlying this deposit is rough, uneven rock, coming sometimes near to the surface of low water. A channel cannot be dredged through it, because the rock interferes. To dredge out the deposit over all the head of the pool would be difficult, expensive, and nearly impossible, because of the uneven rock bottom. It would not be effectual, because the deposit would soon return in the same objectionable form. The object of the proposed channel through this mud and rock is to furnish, first, a sufficient water-way into the pool; and, second, an effectual and economical method of maintaining the water-way. To determine the sufficiency of this water-way, the calculations for flow through it give the following results:

To discharge through it the maximum amount to be provided for, viz, 4,400 cubic feet per second, would require at low water a fall of .59 foot. To discharge the same amount through it with the stage of water 1 foot above low water would require a fall of .33 foot; with the stage of water at 2 feet the fall would be .16 foot, or practically nothing. This supposes the channel to be clear of deposits.

Ordinarily the maximum amount of water would not be required. A considerable deposit in this channel might then exist and the capacity of the channel remain sufficient. In time of peace the amount of water used by the United States will be small. At such times, for many years to come, I suppose the combined consumption of both the arsenal and the Moline Company would not exceed 1,750 cubic feet per second, equivalent to 1,110 horse-power.

To discharge this amount through the channel, having in it a deposit 2 feet deep at extreme low water, would require a fall of .48 foot. With the stage of water at 1 foot, the required fall would be .12 foot. With the stage of water at 2 feet, the required fall would be .045 foot, or practically nothing.

Therefore, in time of war, or if at any time the arsenal required a large amount of power, the channel would have to be kept clear. At other times a considerable deposit could be allowed to accumulate and the water-way still sufficient. It would be better if the depth could be increased to 4 feet; but the additional depth would cost about $40,000.

2d. The channel is also to afford an effectual and economical method of *maintaining* a water-way. If the use of the dredge cannot be avoided, then the channel would permit that the deposit be allowed to go on till it is deep, and the dredge can get a full scoop and work economically. It would confine the dredging to a narrow channel, and give a smooth bottom to dredge over. Moreover, I hope it may prevent the necessity for dredging, or, at any rate, reduce very much its amount and expense.

I have provided in the lower dam four large sluice or wash gates, which can be opened against any pressure of water. The other gates can be opened against the pressure of low water. By opening all the gates not in use, in both dams, a strong rapid current would be drawn down through the proposed channel. Then, by stirring up the mud and sand in the channel by mechanical means, it is probable that the deposit might be washed out and its accumulation controlled in this way without much expense. This could be done from Saturday to Monday, when the water-power is not used.

COST.

My estimate of the cost of excavating this channel is as follows:

600 yards of coffer-dam, at $7 per yard	$4,200
1,100 yards of mud coffer, at $1 per yard	1,100
Pumping out water	350
Excavating 58,000 cubic yards of mud and sand, at 30 cents per yard	17,400
Excavating 52,000 cubic yards of rock, at $2.50 per yard	130,000
Removing coffers	1,300
Tramways, scows, and other expenses	3,000
Total	157,350

It is proposed to apply to this work whatever apppropriation Congress makes for this object, and to prosecute the work as indicated as fast as appropriations for it can be obtained. A less amount than that asked for could not be applied so economically as the whole amount.

I believe it would be unwise, and not economical, for the government, after having expended so much money and built so great a water-power, to leave it unfinished. It is also clear that the acts of Congress on this subject and the contracts made with the Moline company require that the work shall be done.

Comparing this second plan with the first one proposed, I think it is clear—

1st. That it is more economical than the first plan, provided the first plan be made effective.

2d. That the second plan will be effective at low water, the only time when it is needed, and that at any reasonable cost the first plan cannot be made sufficiently effective to give at low water the maximum amount of water required.

3d. That the second plan admits of satisfactory and economical methods of removing the deposits that will always occur; and that the first plan would increase these deposits, and would furnish no satisfactory or economical method of getting rid of them.

4th. If the first plan were carried out, it seems to admit of no future increase of the water-power, except by digging out, through rock, the channel 2¼ miles long between the proposed wing-dam and the Illinois shore; a work so expensive, that I doubt if it would ever be undertaken.

If the second plan is carried out, and at any future time (50 years hence) the wants of the arsenal and manufacturers in this region demand it, certainly the water-power can be increased, at a reasonable cost, by deepening the channel.

In the calculations for *flow* in the channel between the proposed wing-dam and the Illinois shore (first plan), the cross-section of available channel was taken, for low water, at 980 square feet. If this cross-section is correct, then the results obtained in the calculations for flow are very nearly correct. It may be claimed that this cross-section is too small. Certainly if a larger cross-section is the true one, it would give better results. But, discarding all calculations, this much is true: The discharge of the Mississippi at this point at low water has been carefully measured and calculated, and is not more that 17,000 cubic feet per second. Not more than one-tenth of this flow is in the part of the river under consideration at extreme low water. To partition off this part of the river from the rest could not in any way increase its flow. Leave the slope of the surface the same that it is now, and the discharge is 1,700 cubic feet per second, equivalent to about 1,100 horse-power.

The water in the pool cannot be raised without diminishing the slope or fall of the channel above. To diminish this, means diminish the flow and diminish the horse-power. Building the wing-dam would then confine us to 1,100 horse-power as a maximum. It would dam us off from getting any more, and to get this an opening would have to be cut down through the rock and deposits now at the head of the pool.

If, however, the water-power is to be reduced to, say, 1,000 horse-power, and be constructed for the present needs of the Moline Company only, then the slope in the channel above can be diminished, the surface of water in the pool will be raised, and the small increase of head at the water-power dam, so much desired, will be gained. But the deposit will at once commence, and, unless cleaned out, will sooner or later reduce the power at low water to 0.

I regret the length of this paper, but the subject could not be very well explained in less space. As it is, much has been left out that is pertinent to the subject. The matter could be explained verbally much better while using the maps and drawings.

Very respectfully, your obedient servant,

D. W. FLAGLER,
Major of Ordnance, Brt. Lieut. Col., U. S. A., Commanding.

To the CHIEF OF ORDNANCE,
United States Army, Washington.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 76.

LETTER

FROM

THE SECRETARY OF WAR,

ACCOMPANYING

A statement showing that payment of claims for arrears of pay and bounty due discharged soldiers will cease at the end of the fiscal year, if provision be not made for their payment prior to that time.

MAY 13, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 10, 1878.

The Secretary of War has the honor to transmit to the Senate copy of a communication from the Second Auditor of the Treasury, showing that after June 30, 1878, payment of claims for arrears of pay and bounty due discharged soldiers of the regular and volunteer forces will cease, if reappropriations to continue such payments are not made prior to that date.

GEO. W. McCRARY,
Secretary of War.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
May 8, 1878.

SIR: I have the honor to invite your attention to the fact that on June 30th, the unexpended balances of appropriations named below will be carried to the surplus fund, and that there will be no provision for the payment of claims for arrears of pay, &c., due discharged soldiers of the regular and volunteer forces remaining unadjusted on that date, unless so much of said unexpended balances as may be required be rendered available by reappropriation.

Unexpended balances to be carried to surplus fund.

Pay of two and three year volunteers, 1871 and prior years (reappropriated).
Pay of the Army, 1871 and prior years (reappropriated).
Pay of the Army, 1872 (reappropriated).
Pay of the Army, 1873 (reappropriated).
Pay, &c., of the Army, 1875.
Pay, &c., of the Army, 1876.

I would also state for your information, and such action as you may deem appropriate, that since the estimate of amounts to be reappropriated was submitted to Congress in January last (Ex. Doc. 46, H. R. 45 Cong.,

2d sess.), additional claims have been certified by the accounting officers, as follows:

Bounty to volunteers, their widows and legal heirs, 1871 and prior years	$65,000 00
Pay, &c., of the Army 1874	136 56
Medical and Hospital Department, 1871 and prior years	145 00
Traveling expenses of California and Nevada Volunteers	67 14
Ordnance, ordnance stores, &c., 1871 and prior years	209 00
Allowance for reduction of wages under eight-hour law	306 34

I estimate that in addition to the amounts set forth in the executive document above referred to, $420,082.48 will be required for the service of the fiscal year 1876, and prior years, to pay claims certified and to be certified by the accounting officers of the Treasury Department up to June 30, 1879, and payable from the following appropriations, the unexpended balances of which have been, or will shortly be, carried to the surplus fund, as per statement inclosed:

Bounty to volunteers, their widows and legal heirs	$275,000 00
Pay of two and three year volunteers, 1871 and prior years	100,000 00
Pay of the Army, 1871 and prior years	25,000 00
Pay of the Army, 1872	1,000 00
Pay of the Army, 1873	1,000 00
Pay, &c., of the Army, 1874	2,000 00
Pay of the Army, 1875	6,000 00
Pay of the Army, 1876	7,000 00
Medical and Hospital Department, 1871 and prior years	2,500 00
Ordnance, ordnance stores, &c., 1871 and prior years	209 00
Allowance for reduction of wages, &c	306 34
Traveling expenses of California and Nevada volunteers	67 14
Total	420,082 48

Very respectfully,

E. B. FRENCH, *Auditor.*

Hon. SECRETARY OF WAR.

Statement showing amounts available for reappropriation May 1, 1878.

Title of appropriation.	Amounts in the surplus fund (actually and constructively).	Amounts liable to surplus fund June 30, 1878.	Amounts available for reappropriation.
Bounty to volunteers, their widows and legal heirs, 1871 and prior years	$333,592 79	.....	$333,592 79
Pay of two and three years volunteers, 1871 and prior years	103,010 91	$758,127 86	861,138 77
Pay of the Army, 1871 and prior years	2,546,903 42	8,405 65	2,555,309 07
Pay of the Army, 1872	1,313,476 74	32,977 56	1,346,454 30
Pay of the Army, 1873	1,304,718 29	42,776 00	1,347,494 29
Pay, &c., of the Army, 1874	37,188 39	.....	37,188 39
Pay, &c., of the Army, 1875	.....	111,694 74	111,694 74
Pay, &c., of the Army, 1876	.....	495,059 67	495,059 67
Medical and Hospital Department, 1871 and prior years	782,586 86	.....	782,586 86
Ordnance and ordnance stores, 1871 and prior years	841,176 55	.....	841,176 55
Allowance for the reduction of wages under the eight-hour law	37,454 19	.....	37,454 19
Traveling expenses of California and Nevada volunteers	816 61	.....	816 61
Total	7,300,924 75	1,449,041 48	8,749,966 23

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC No. 77.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING

A substitute proposed by the Adjutant-General of the United States Army for section 5485 of the Revised Statutes, relative to attorney fees in claims for bounty.

MAY 13, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington, May 10, 1878.

The Secretary of War has the honor to transmit to the United States Senate a letter of the 6th instant from the Adjutant-General United States Army, proposing a substitute for section 5485 of Revised Statutes of the United States, relative to attorney fees in claims for bounty, &c., and a brief of certain correspondence wherein the necessity for the proposed amendment is shown.

The change here proposed is recommended by the department.

GEO. W. MCCRARY,
Secretary of War.

To the PRESIDENT,
United States Senate.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., May 6, 1878.

SIR: In accordance with suggestion of the Judge-Advocate-General, I have the honor to submit herewith a proposed substitute for section 5485 of Revised Statutes of the United States, relative to attorney fees in claims for bounty, &c., and to inclose also a "brief" of certain correspondence, from which the want of this legislation referred to will appear.

Consultation has been had with local United States attorneys and United States disbursing officers at New Orleans, La., and Louisville, Ky., and also with Second Auditor and Commissioner of Pensions. In their judgment, they think the proposed substitute will meet the requirements of the case.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

To the honorable the SECRETARY OF WAR.

ADJUTANT-GENERAL'S OFFICE, *May* 6, 1878.

Brief to accompany letter of this date to the honorable Secretary of War, relative to joint resolution of Congress of July 26, 1866, *prescribing the scale of fees to be allowed attorneys in claims for bounty of colored soldiers, &c., and the penalties for charging, directly or indirectly, any greater sum.*

Complaints having been made to this office that a subagent in Donaldsonville, La., of an attorney in Washington, D. C., was systematically engaged in violating the law referred to, by extorting and receiving from claimants illegal and excessive fees, the subject was, by the War Department, placed before the Department of Justice, together with the papers pertaining to certain specific cases, with request for their transmission to the United States attorney for the district of Louisiana, with instructions to institute legal proceedings against the said subagent on account of the offenses referred to.

In his report to the Attorney-General, submitted under date of May 25, 1877, the United States attorney for Louisiana states that he had given the subject special attention, with especial reference to the question of amenability of subagents to the provisions of the joint resolution of July 26, 1866, and adds, the attorney in Washington "was the agent of the soldiers, not" the subagent in Donaldsonville; "and the latter, in my opinion, is not amenable to the stringent, though just, provision relative to punishment found in the joint resolution. Indeed, I may add that a liberal interpretation of the words of section 2 of the aforesaid resolutions will not bring" [the subagent] "within that legislative enactment." A copy of said report was furnished to the War Department by the Attorney-General.

In the mean time the attorney in this city was informed by this office that no fees could be paid to him on claims in which he was attorney of record until he had given assurance that the illegal practices of his subagents should cease.

Against this action the attorney protested in a communication of considerable length, in which he reviewed the subject in detail, and disclaimed any and all responsibility for the acts of his subagents. The subject was then submitted to the Judge-Advocate-General for opinion as to the amenability of subagents to the provisions of the joint resolution of July 26, 1866. In his report, submitted under date of January 17, 1878, the Judge-Advocate-General stated that, "as to the course to be pursued to bring the guilty parties to justice in such cases, it is, in my opinion, at least doubtful whether the provision of the joint resolution of July 26, 1866, is sufficient to reach the class of cases described in the papers, or any cases other than those of the agents or attorneys to whom is paid or payable the legal fees as fixed by the statute. It is suggested therefore that there be sought from Congress a further enactment which shall make punishable by fine and imprisonment any fraud or fraudulent extortion, exaction, or overcharge committed by any persons whatever against recipients of bounty money paid to colored men (late soldiers), or to their heirs or representatives."

Section 5485, Revised Statutes United States, page 1069, reads as follows:

"Any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services, or instrumentality in prosecuting a claim for pension or bounty land than is provided in the title pertaining to

pensions, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land-warrant issued to any such claimant, shall be deemed guilty of a high misdemeanor, and, upon conviction thereof, shall, for every such offense, be fined not exceeding five hundred dollars, or imprisonment at hard labor not exceeding two years, or both, at the discretion of the court."

It is proposed to substitute the following, to reach attorneys, agents, &c., in other claims as well as pension and land cases. The cases especially in point are colored claimants for arrears of pay, bounty, &c. The joint resolution of July 26, 1866, in regard to attempted overcharges by agents, having been construed to apply only to *attorneys of record*, this change is necessary to reach subagents, &c., who act for claimants or attorneys of record, and, in some cases, collect or attempt to collect excessive fees and charges.

PROPOSED SUBSTITUTE FOR SECTION 5485, REVISED STATUTES.

"Any agent or attorney or other person instrumental in any way in the preparation, prosecution, or collection of any claim for arrears of pay, bounty, prize or any other money, bounty land, or pension, who shall, directly or indirectly, bargain for, demand, receive or retain, any greater compensation for his services or instrumentality in preparing, prosecuting, or collecting said claim than that provided by law, or who shall demand any additional sum beyond the fees allowed by law from any claimant for any real or pretended services or advances made, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land-warrant issued to any such claimant, he shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding five hundred dollars, or imprisonment at hard labor not exceeding two years, or both, at the discretion of the court, and shall forever after be excluded from prosecuting any claim against the United States."

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 78.

LETTER

FROM

THE SECRETARY OF WAR,

SUBMITTING

A statement from James B. Eads relative to work executed at the South Pass of the Mississippi River.

MAY 14, 1878.—Referred to the Select Committee on Transportation Routes to the Seaboard and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 14, 1878.

The Secretary of War has the honor to transmit to the United States Senate copy of a communication from James B. Eads, dated the 7th instant, submitting a statement relative to the amount of work executed at the South Pass of the Mississippi River, and asking that certain specified modifications be made in the conditions imposed by the law known as the jetty act, under which the works at the South Pass have been prosecuted.

This communication was referred to Generals J. G. Barnard and H. G. Wright, of the Corps of Engineers, for examination and report, and a copy of their report, dated the 13th instant, is herewith transmitted.

It will be seen that while the board are of the opinion that the widths of channel proposed by the petitioner may be considered as fairly meeting the present wants of commerce, they regard the question whether the concessions asked for should be granted as peculiarly a question for Congress to decide.

The views expressed by Generals Barnard and Wright are concurred in by this department.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT,
United States Senate.

WASHINGTON, D. C., *May* 7, 1878.

SIR: I have reached a point in the construction of the works authorized by the jetty act at which I deem it absolutely necessary to communicate certain matters for your consideration. I respectfully submit, therefore, the reasons which induce me to ask for such modification in the times of payment set forth in the law as are neceasary to relieve me and my associates of the serious financial difficulties with which we

are embarrassed, and to enable us to prosecute the work with greater energy.

The progress of the work has shown that the desire to guard the government against the possibility of bearing any portion of the risk of the jetty system, or of the hazards of construction, has resulted in framing a law which imposes on us unnecessarily stringent conditions of payment. In consequence of the very large portion of the work which we have had to execute in order to secure the two payments already received, and of the stringency of these conditions, we find ourselves oppressed with such a burden of debt as to almost completely paralyze, for the present, our ability to push the work with the energy necessary to insure the largest benefits to the public at the earliest possible time.

The provisions of the law were intended to afford a reasonable reimbursement of our outlays as fast as the work progressed, after certain specified depths of channel should be secured by permanent works. It was impossible, however, to tell with any degree of accuracy how much of the whole work would have to be executed before we could be entitled to the first payments under the law, and while the total cost of the improvement will not exceed the original estimates, the proportion of the entire outlay necessarily expended to secure the present depth has greatly exceeded our expectations.

Experience has shown and custom has sanctioned the wisdom of the government paying 90 per cent. of the contract-price for work as it progresses, by which those who undertake it may avoid excessive rates of interest and needless financial burdens, which can result in no benefit to the government.

The compensation fixed in the law for the work we are executing is to be $5,250,000. We have already completed at least 80 per cent. of this entire work, and have received on it thus far only $1,000,000. If we were compensated for 90 per cent. of the work done, we would receive $2,826,000 more than has been paid to us. We do not ask for any such liberality, but refer to this fact to show the hardships under which we are laboring by the terms of the law, and the absolute security with which the government can grant the relief we are compelled to ask.

By the terms of the act, thirty months from its approval were allowed within which to secure a depth of 20 feet, and two feet additional are required to be secured each year thereafter. The act was approved March 3, 1875, and by September 3, 1877, we were required to have a channel of 20 feet, and 22 feet by September 3, 1878. These depths have been already secured, and the stipulated compensation received. We have, therefore, by the terms of the law, until September 3, 1879, to secure 24 feet, and to September 3, 1880, to secure the 26 feet channel. The interests of the public will of course be promoted by the attainment of these depths at an earlier day.

Under the present terms of payment it will be impossible for us to expend upon the work the large additional sums still necessary to secure the maximum channel at the earliest possible period, for the reason that the indebtedness already incurred will absorb so much of the next payments as to leave for it a totally inadequate provision.

The sum of $1,250,000 of the stipulated compensation becomes due and payable after certain depths have been maintained for twelve months, and these payments bear interest at the rate of 5 per cent. per annum. By adding these deferred payments to the cash payments as the latter are earned, the government will save interest on the respective amounts, and will greatly relieve us, while an earlier completion of the work will be secured.

The commission of engineers authorized by Congress in 1874, and which reported in favor of applying the jetty system to the South Pass, proposed to secure a channel 30 feet in depth, and the permanent maintenance of only 25 feet, without any specified width. The jetty act requires a permanent depth of 30 feet with a least width of 350 feet. This great width of 30 feet water will involve a much larger channel than was contemplated by the commission as proper for the size of the pass. Such great width cannot probably be secured without a central depth of channel several feet greater than that recommended by the commission. We do not ask to have the depth of 30 feet lessened, but observation confirms the opinion (which I expressed to the committees when the bill was under consideration) that the width required was injudicious and might involve injury to the works.

The payments under the present law are as follows:

On securing—			
24 feet deep by 250 feet in width....	$500,000;	cash in one year.....	$250,000
26 feet deep by 300 feet in width....	500,000;	cash in one year.....	250,000
28 feet deep by 300 feet in width....	500,000;	cash in one year.....	250,000
30 feet deep by 350 feet in width....	500,000;	cash in one year.....	500,000
Total.....	2,000,000	Total.....	1,250,000

The amendments desired are as follows:

On securing a channel through the jetties—	
24 feet deep by a least width of 150 feet	$750,000
25 feet deep by a least width of 150 feet	750,000
26 feet deep by a least width of 150 feet	500,000
27 feet deep by a least width of 100 feet	375,000
28 feet deep by a least width of 100 feet	375,000
29 feet deep by a least width of 100 feet	250,000
30 feet deep by a least width of 100 feet	250,000
Total	3,250,000

Provided, that when each of the above depths and widths has been obtained the survey shall also show through the jetties a channel of the following depths and widths, viz: When 24 by 150 feet shall have been obtained, there must also be a channel 22 feet deep by a width of 200 feet; when 25 by 150 feet shall have been obtained, there must also be a channel 22 feet deep by 250 feet wide; when 26 by 150 feet shall have been obtained, there must also be a channel 22 feet deep by 300 feet wide; when 27 by 100 feet shall have been obtained, there must also be a channel 24 feet deep by 200 feet wide; when 28 by 100 feet shall have been obtained, there must also be a channel 24 feet deep by 250 feet wide; when 29 by 100 feet shall have been obtained, there must also be a channel 24 feet deep by 250 feet wide; when 30 by 100 feet shall have been obtained, there must also be a channel 26 feet deep by 200 feet wide.

By the above arrangement, the first payment of $750,000 will not be made until a channel is attained large enough for all practical purposes; and the fact that no further payments are to be made, except as each additional foot in depth is gained, insures every effort to maintain and increase the size of the channel as fully as under the present distribution of payments.

The act provides that after a channel 30 feet deep and 350 feet wide is secured, $100,000 per annum shall be paid for its maintenance during twenty years. This clause should be amended to apply to the 30 feet channel above described. The $1,000,000 reserved by the jetty act to

be held in the United States Treasury as security for the performace of this part of our obligations will remain undisturbed.

We undertook the construction and maintenance of these works for $692,110 less than the official estimate of the commission upon whose report the act was framed. We also assumed the whole risk of their failure to produce the desired channel, notwithstanding the confident and reiterated predictions made by official and other experts that they would be unsuccessful. We likewise took all the risk of their destruction by storms and treacherous foundations—dangers which were believed by many to be insurmountable. Besides all this, we were not permitted to improve the pass of our choice, with its normal depth of fifteen feet, but were given one only a quarter as large, with a depth of but eight feet. In spite of the natural difficulties which were to be surmounted during a period of unusual financial prostration, we have carried this enterprise to a point where its complete success is acknowledged even by its opponents. We have changed the little pass into a grand channel of commerce, through which the largest shipping that visits the port of New Orleans floats in safety; while every prediction of failure and of reformation of the bar in advance of the jetties is shown by official surveys to have been without foundation.

We ask no increase in the price of the work, nor do we ask to be relieved of the obligation to create a permanent channel thirty feet deep through the jetties, and that shall be fully as wide as the size of the pass will justify. We ask no legislation to retrieve forfeited privileges or lapsed concessions, nor the assumption of any risk of outlay for doubtful benefits. We ask simply that a reasonable portion of moneys actually expended may be repaid to relieve embarrassments resulting from provisions in the law unusually severe and oppressive, and which cannot now be retained without injuriously reacting upon the commercial and industrial interests of the country. We have striven to carry through, by private means and individual hazard, the largest and most important public work ever undertaken by the government; and have forborne, under many discouragements, to ask relief from the stringent conditions of the law until the official reports of the most eminent engineers of the government have confirmed the public faith in our complete success; and now that sheer necessity compels us to do so, we only come after the changing tides of commerce attest the substantial benefits already reached, and after the people are assured that private enterprise and courage have promptly secured, at moderate cost, "an open river mouth" for the Mississippi in lieu of the more costly and dilatory method proposed of a canal with locks. And with this record we ask no payments on the work that will not leave in the hands of the government an ample amount of our compensation to insure the entire completion of the jetties.

With great respect, I have the honor to be, your obedient servant,

JAS. B. EADS.

Hon. GEORGE W. MCCRARY,
Secretary of War, Washington, D. C.

[Indorsement.]

WAR DEPARTMENT, *May* 8, 1878.

Respectfully referred to Generals J. G. Barnard and H. G. Wright, Corps of Engineers, for examination and report.

GEO. W. MCCRARY,
Secretary of War.

WASHINGTON, D. C., *May* 13, 1878.

SIR: We have the honor to acknowledge the reference to us for examination and report of the communication of Mr. James B. Eads, dated the 7th instant, submitting a statement relative to the amount of work executed at the South Pass of the Mississippi River, and asking that certain specified modifications be made in the conditions imposed by the law known as the jetty act, under which the works at the South Pass have been prosecuted, and to present our views thereon as follows:

In his communication Mr. Eads says:

> We have completed eighty per cent. of the entire work. * * *
> If we were compensated for ninety per cent. of the work actually done, we would receive $2,825,000 more than has been paid to us.

Referring to the words of the law, we find it stated that "the intent of this act is not simply to secure the wide and deep channel first above named, but likewise to provide for the construction of thoroughly substantial and permanent works, by which said channel may be maintained for all time after their completion."

There is in these words quoted from the law not only an unmistakable exposition of its intent, but a clear distinction implied between constructions which will "simply secure the wide and deep channel and the construction of thoroughly substantial and permanent works," &c.

The works as they now are have served their purpose to the extent of the requirements of the law to this date, but the ultimate requirements of the act are 30 feet depth for 350 feet width; whereas only the second of the six stages of progress defined by the law have been arrived at: that which gives 22 feet depth for 200 feet width. There is exhibited, however, a progressive increase of width between the 24 feet curves to justify, to some extent, the assumption that the actual works are fulfilling their function of creating additional depths; but we are not of opinion, taking the volume and linear extent *alone* of the works executed as measured, that "eighty per cent. of this entire work has been completed." If we make the requirements of the law a measure, we should hardly feel justified in accepting the achievement of a channel 22 feet deep and 200 feet wide as 80 per cent. of the achievement ultimately required, viz, 30 feet deep and 350 wide, even though it could be shown that the requisite bottom-scouring in cubic yards for the respective channel-dimensions were in that ratio.

Or if we turn from the question of geometric magnitude of works executed to the character of the existing works, we shall find that very much more than 20 per cent. of work, estimated by cost, remains to be done to make them, in the words of the law, "substantial and permanent works, by which said channel may be maintained for all time after their completion."

The commission of officers appointed by direction of the President, November 2, 1876, in responding to the categorical query "as to the materials used and the character and permanency with which the jetties are being constructed, and as to whether the work is being constructed according to the spirit of the act as mentioned in the tenth (13th) section thereof," in reporting affirmatively, prefaced this expression of opinion by the statement:

> We do not conceive it to be required of Mr. Eads that each stage of the progress shall exhibit such "substantial and permanent work" as the law ultimately contemplates, but rather that each stage of the work shall show an adequacy to create a channel of the depth and width demanded, and at the same time such a fair and honest prosecution of the work as shall be, as far as it has gone, so much really accomplished toward

the construction of works which, in the language of the law, may be maintained for all time after their completion.

We have already remarked that we deem not only an enlargement of section but a large application of stone to be essential to the security of the jetties, their sea-ends especially; and we are of the opinion that this enlargement of sections at the sea-ends and consolidation throughout by the application of stone should be undertaken at once, and a reasonable progress therein be made the condition of the second and all future payments.

Moreover, the undersigned, as a commission to decide certain points upon the becoming due (December 15, 1877) of the second payment, in responding to the interrogatory, "Are the jetties and auxiliary works constructed or in progress of construction permanent, sufficient, and thoroughly substantial, within the meaning of said act of Congress?" expressed themselves as follows:

No part of the jetties are as yet entirely completed, and some portions, especially the outer ends, will require extension of width and a large amount of stone before they are brought to that permanent and substantial condition when completed which the act, in our judgment, requires. This additional work, we understand, Mr. Eads and associates propose to do from time to time, as payments are made to them by the United States. * * *

With regard to the sea-ends, however, a much larger application of stone will still be necessary; but the defect of vertical sea-sides has not yet been remedied, nor has the required enlargement of section, to any great extent, been made. Nevertheless these ends have maintained themselves so as to suffer only from subsidence of the bottom, compression of the mattresses, and superficial abrasion by storms. It is understood to be Mr. Eads's intention to enlarge and strengthen these sea-ends in accordance with the views above expressed. * * *

Further observation and longer experience are necessary to a full development of the question involved, *i. e.*, the destruction of the wood of the mattresses by the teredo; but it is believed that when the lateral slopes of stone are fully provided, the penetration of the worm into the interior of the jetties in these salt-water exposed parts will be checked, and that, to the extent to which they may be impaired, the remedy will be found in the increase of the quantity of stone.

While the commission first referred to conceded that the plan of construction devised by the board of 1874, which recommended the jetty system, was "in no respect obligatory upon Mr. Eads," that "experience in the work on the locality would show the cheapest and best methods," yet it "pointed out the fact that while the plans of the board contemplated the jetties to be made up of one-third stone and two-thirds fascines, the amount of stone thus far used has been very small indeed; barely enough to sink the mattresses." Since that date about twenty thousand cubic yards of stone have been applied, mainly to the top surface of the jetties, and, as we are informed by Mr. Eads, about fourteen thousand cubic yards in addition are on hand ready for application or on the way. The total amount, say, 34,000 cubic yards, is still quite insignificant compared with the more than two hundred thousand cubic yards required by the plans of the board of 1874. We are by no means taking the latter estimate as an absolute standard, for we have conceded that experience justifies a considerable decrease of section, and perhaps a diminution of quantity of stone in parts of the work. But experience has not as yet had time to settle all questions. Stone is the costly element in the construction, and, as already remarked, a large amount of this material must yet be applied.

If we turn now to the works at the Head of the Passes, we find them alluded to by the commission of 1876 as "mostly of a tentative and temporary character, which, as their proper positions are determined, should be replaced by substantial and permanent structures," &c.; a description which without change applies to these works at the present date.

We by no means depreciate the extent or the value of the works as

they exist; but we cannot concur in the petitioner's statement to the effect that "we have already completed at least eighty per cent. of this entire work."

We, as members of the commission of 1876, and as ourselves constituting the commission of 1877, have expressed our opinion that the work "is being constructed according to the spirit of the act." We believe, moreover, that the work is now so far advanced and the success so far pronounced that it is for the interest of the government and the country not only to have the constructions carried on but pushed with the utmost possible vigor to such a point at least as shall insure their security and utmost efficiency of action in increasing the capacity of the channel.

The present law fixes times or periods at which specified depths must be attained, as follows: Thirty months are granted for securing 20 feet; but the law (fourth section) says explicitly: "Said Eads and his associates shall, after securing 20 feet of water, secure an additional depth of not less than 2 feet during each succeeding year thereafter." This clearly makes the date of the securing of 20 feet depth the initial time-point from which to compute the periods for the subsequent increased depths. Thus December 27, 1876, was this initial date; hence, 22 feet was called for by the law December 27, 1877, and 24 feet depth is demanded December 27, 1878, instead of September 3, 1879, as the petitioner states the matter.

The foregoing are the main points in the petitioner's letter upon which he supports his plea for a modification of the terms of the law as regards payments. He states these terms, as they affect future payments, in tabular form, as follows:

Third payment on securing 24 feet depth by 250 feet width	$500,000;	one year thereafter...	*$250,000
Fourth payment on securing 26 feet depth by 300 feet width	500,000;	one year thereafter...	*250,000
Fifth payment on securing 28 feet depth by 300 feet width	500,000;	one year thereafter...	*250,000
Sixth payment on securing 30 feet depth by 350 feet width	500,000;	one year thereafter...	*500,000
Totals	2,000,000		*1,250,000

To a full understanding of the matter of payments as now prescribed, we add, that the first payment of $500,000 on securing 20 feet depth by 200 feet width, and the second payment of $500,000 on securing 22 feet depth by 200 feet width, became due December 27, 1876, and December 15, 1877, respectively, and have been paid; that $1,000,000, "deemed as having been earned by said Eads and his associates" when the 30 by 350 feet channel shall have been obtained (when the sixth payment becomes due), is to be retained as "security" for the future maintenance for a term of years of said channel. We have thus the stated total of $5,250,000. It must be remembered, however, that the items of the last column (marked *), payable each one year after the respective channel-dimensions to which they refer have been secured, though bearing interest from that date, become due, only in case "said depth and width shall have been maintained during twelve consecutive months."

In lieu of the foregoing terms of payment and widths and depths of channel prescribed by the law, the petitioner desires that the following be authorized:

Third. On securing a channel through the jetties 24 feet deep by 150 feet wide, provided it shall also be 22 feet deep by 200 feet wide	$750,000
Fourth. On securing a channel through the jetties 25 feet deep by 150 feet wide, provided it shall also be 22 feet deep by 250 feet wide	750,000
Fifth. On securing a channel through the jetties 26 feet deep by 150 feet wide, provided it shall also be 22 feet deep by 300 feet wide	500,000
Sixth. On securing a channel through the jetties 27 feet deep by 100 feet wide, provided it shall also be 24 feet deep by 200 feet wide	375,000
Seventh. On securing a channel through the jetties 28 feet deep by 100 feet wide, provided it shall also be 24 feet deep by 250 feet wide	375,000
Eighth. On securing a channel through the jetties 29 feet deep by 100 feet wide, provided it shall also be 24 feet deep by 250 feet wide	250,000
Ninth. On securing a channel through the jetties 30 feet deep by 100 feet wide, provided it shall also be 26 feet deep by 200 feet wide	250,000
Total	3,250,000

Moreover, the act provides that when the 30 by 350 feet channel is secured, $100,000 per annum shall be paid, under certain specified conditions, for its maintenance during twenty years. It is asked that this clause be amended so as to apply to the (as desired) modified 30 feet channel; the $1,000,000 to be reserved as security for this maintenance being still retained under unchanged conditions.

On the above, and the arguments presented in support thereof, we now make the following comments:

The petitioner is quite right in saying that—

> The commission of engineers authorized by Congress in 1874, and which reported in favor of applying the jetty system to the South Pass, proposed to secure a channel 30 feet in depth and the permanent maintenance of only 25 feet without any specified width.

In fact, that commission (or "board," as styled by the organic law and order) states:

> The depth of 30 feet has been chosen, in order that some time may elapse before the bar which will form at the sea-end of the jetties can have less than 25 feet at mean low water upon it, that being the minimum depth which it is desired to maintain.

In other words, that board aimed at simply maintaining, under all contingencies, a navigable depth (of unspecified width) at mean low water of 25 feet, and to this end it aimed at securing, in the first instance, 30 feet depth, in order that for a long time thereafter, without extension of jetties, there should be not less than 25 feet at mean low water. This depth, since the law makes mean *high* water instead of low water the plane of reference, corresponds nearly to 26 feet depth under the law. It only differs, therefore, from the conditions of the petitioner's (desired) fifth payment by the latter specifying a width of 150 feet. It only differs from the desired ninth (and last) payment in the latter specifying a width of 200 feet for a depth of 26 feet and a central depth of 30 feet for a width of 100 feet. The petitioner states:

> The jetty act requires a permanent depth of 30 feet, with a least width of 350 feet. This great width of 30 feet water will involve a much larger channel than was contemplated by the commission as proper for the size of the pass. Such width cannot probably be secured without a central depth of channel several feet greater than that recommended by the commission.

He states also that he represented repeatedly to the committee, when the bill was under consideration, that the width required was injudicious, and might involve injury to the work. We remark that in the pass itself there is found, for the greater portion of its length, a greater width of 30 feet depth than 350 feet. We have no personal knowledge of the views of the committee in insisting on the above width. They

might have believed it important to have a channel width over the bar fully equal to that in the pass itself.

After these quotations and remarks, we proceed to state our views as follows:

The depths and widths specified, as desired by the petitioner, will fulfill measurably the needs of commerce. We find that the depth prescribed for his (desired) fifth payment to be about equal to what the board of 1874 aimed at permanently maintaining, while the 30 feet depth with 100 feet width of the ninth and ultimate payment would enable the greatest-draught ocean-going vessel to enter the pass. A draught of 23 feet (and it must be borne in mind that at the mouths of the Mississippi nearly all the depth on the bar can be realized in actual draught) will include probably 85 per cent. of the sea-going vessels of the world; while over the bar of New York Harbor 26 feet is about the maximum for regular traffic, and 28 feet (and a small fraction) the maximum ever carried over (the case of a war-vessel, the Spanish "Numancia," we believe).

The board of 1874, to which, as the agent expressly constituted to investigate the whole question, and the authority which recommended and planned jetties for the South Pass, states in reference to its choice of passes, "The greater width (of the Southwest Pass) is more favorable to navigation, but in our opinion the South Pass, when improved, will be adequate to the present and prospective wants of commerce."

The petitioner, we think, has no good ground for the complaint that he was not permitted to improve the pass of his choice. The difficulties, we deem, would have been far greater there; at any rate, Congress was fully justified in legislating for the much less costly improvement for a navigation deemed fully adequate.

We find that under the desired modification to get the fifth payment, the contractors must have secured a navigation-capacity probably equal to that contemplated for permanent maintenance by the board of 1874, while he will at this stage of progress be entitled to but $3,000,000 of the $5,250,000 of his ultimate total. As the law now stands he would be entitled to $2,250,000, including the sum of $250,000 for keeping open the 24 feet channel for twelve consecutive months.

We are of the opinion, as before stated, that the widths of channel proposed by the petitioner may be considered as fairly meeting the present wants of commerce, but the widths proposed by the law as it now stands are obviously desirable; and the question whether the large concession asked for in those widths should be granted and the compensation for the depths between 24 and 28 feet increased at the expense of the deeper ones seems to be one on which we can hardly be considered the proper exponents.

Respectfully submitted.

J. G. BARNARD,
Colonel of Engineers, and Brevet Major-General.
H. G. WRIGHT,
Lieutenant-Colonel of Engineers, and Brevet Major-General.

Hon. GEORGE W. MCCRARY,
Secretary of War, Washington, D. C.

S. Ex. 78——2

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 79.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In answer to a Senate resolution of April 29, 1878, information respecting the terms and conditions under which the surrender of the Cuban insurgents has been made, and in relation to the future policy of Spain in the government of the island of Cuba.

MAY 14, 1878.—Read, referred to the Committee or Foreign Relations, and ordered to be printed.

To the Senate of the United States:

In answer to the resolution of the Senate of the 29th ultimo, I transmit, herewith, a report from the Secretary of State, with its accompanying papers.

R. B. HAYES.

WASHINGTON, *May* 14, 1878.

DEPARTMENT OF STATE,
Washington, May 14, 1878.

The Secretary of State, to whom was referred the resolution of the Senate of the 29th ultimo, requesting the President "to communicate to the Senate, if not incompatible with the public interests, such information as the government has received respecting the terms and conditions under which the surrender of the Cuban insurgents has been made, together with such other information in his possession respecting the future policy of Spain in the government of the island of Cuba," has the honor to lay before the President the papers specified in the subjoined list, which contain the information called for by the resolution.

WM. M. EVARTS.

To the PRESIDENT.

LIST OF PAPERS.

Correspondence with the Spanish Legation.

No. 1. General Jovellar to Mr. Mantilla. [Telegram.] Havana, February 16, 1878.
No. 2. Mr. Mantilla to Mr. Evarts. Washington, March 23, 1878. (Extracts.)
No. 3. The same to the same Washington, March 23, 1878.
No 4. The same to the same. Washington, April 3, 1878. (Extracts.)
No. 5. Mr. Seward to Mr. Mantilla. Washington, April 10, 1878.

Correspondence with the Consulate-General at Havana.

No. 6. Mr. Hall to Mr. Seward. (No. 663.) Havana, February 16, 1878.
No. 7. The same to the same. (No. 664.) Havana, February 23, 1878.
No. 8. Mr. Seward to Mr. Hall. Washington, February 26, 1878.
No. 9. Mr. Hall to Mr. Seward. (No. 666.) Havana, March 2, 1878.
No. 10. The same to the same. (No. 667.) Havana, March 2, 1878.
No. 11. The same to the same. (No. 668.) Havana, March 5, 1878.
No. 12. Mr. Seward to Mr. Hall. Washington, March 12, 1878.

No. 1.

General Jovellar to Mr. Mantilla.—Handed to Mr. Evarts by Mr. Mantilla, February 16, 1878.

[Translation.]

HAVANA, *February* 16.

(SPANISH) MINISTER, *Washington:*

His excellency has suspended the operations of the campaign in consequence of agreements between the general-in-chief and the central junta of the insurgents, which, it is very probable, will give peace as the final result.

JOVELLAR.

No. 2.

Mr. Mantilla to Mr. Evarts.

WASHINGTON, *March* 23, 1878. (Received March 23.)

The undersigned, envoy extraordinary and minister plenipotentiary of His Catholic Majesty, has the honor to acknowledge the receipt of the note of the honorable the Secretary of State of the United States, of the 21st instant, referring to the pacification of the island of Cuba.

* * * * * *

The undersigned is collecting data and information necessary to answering the aforesaid note, which he will be able to do in a very few days. * * * * * In a few days the undersigned will have the honor to send a note to the honorable Mr. Evarts, acquainting him more fully with the situation in Cuba, and answering his of March 21st, and in the meanwhile he avails himself of this occasion to renew him the assurance of his very high consideration.

ANTONIO MANTILLA.

No. 3.

(*Mr. Mantilla to Mr. Evarts.*)

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
Washington, March 23, 1878. (Received March 25, 1878.)

The undersigned, envoy extraordinary and minister plenipotentiary of His Catholic Majesty, in compliance with the desire to be accurately

informed as to the present real condition of the Island of Cuba, which was expressed to him by the honorable Secretary of State of the United States, during their conference of Thursday, the 21st instant, takes pleasure in communicating the official information which he has received in relation to the latest phase and speedy termination of the civil contest in that island.

Without investigating the origin of the unjustifiable and useless Cuban insurrection, or enumerating the various causes, both internal and external, which have occasioned its duration for a longer time than it could have lasted under normal circumstances in Spain, or drawing a comparison between the ever conciliatory policy of the Spanish government, and the until lately uncompromising one of the misguided sons of the mother country, which task he thinks he could easily and triumphantly perform to the satisfaction of his countrymen and the enlightenment of foreigners, but which would require more time than he now has at his disposal, the undersigned will confine himself to a brief sketch of the most remarkable circumstances that gave rise to the latest events.

The insurrection having been broken by various causes, both internal and external, with its most active forces reduced by the action of time and the vicissitudes of the struggle to elements which were for the most part foreign, with no connection with each other, and having no direct interest in the future of the island, and having been conquered by the policy of energy in the field of battle, of generosity toward the misguided insurgents, and of clemency toward the vanquished, which was so happily inaugurated by Generals Jovellar and Martinez Campos, the present governor and captain-general of the island, and the general-in-chief of its army; the insurrection, I say, was in a visible state of decadence when, in October last, several of the most prominent Cuban leaders surrendered unconditionally to the Spanish authorities, and spontaneously undertook the task of bringing over to their pacific plans the few leaders of Cuban origin who still remained in the ranks of the insurgents.

Having been taken and tried by court-martial, by order of the geneeral-in-chief of the Cuban forces, some of these leaders paid for their patriotic efforts at pacification with their lives; but, almost at the same time, the shadows of a legislative chamber and of a government of the imaginary Republic of Cuba, which never had any form or real life, nor any foot-hold in any city, village, or hamlet, and which for some time had been wandering through the thickest forests of the most inaccessible portion of the extensive and thinly-peopled region of Camaguey, were at last overtaken and surprised by small bodies of Spanish troops, the chamber, in its mountain encampment, and the head of the government while leaving that encampment on a political errand.

The result was the dispersion of the so-called chamber (house) of representatives, the death of its presiding officer, Don Eduardo Machado Gomez, and some of its members; that of the Secretary of War, Lieut. Col. La Rua, and the capture of the president of the so-called republic, Don Tomas Estrada, who was not tried by any court, but sent to Spain by the government. The treatment received by Mr. Estrada from the time of his arrival at the Spanish headquarters, the consideration shown him during his brief stay in the Morro Castle at Havana by the captain-general of the island, and complaints made by him against his political friends and partisans, not only on account of their abandonment of him, but also of the accusations of disloyalty which had been made by them against him, form the subject of the last part of a letter written by him to one of them residing in New York, which was published on the 15th

of December in the Cuban newspapers of that city. That portion which is the most interesting of this long letter will be found in Appendix A.

Speaking of the aspect then presented by the insurrection in Cuba, one of its organs in New York, La Independencia, in its number for October 27, 1877, after referring to the latest news received from Cuba as grave and highly important, sought to make it appear less significant, expressing itself thus:

"The news to which we refer is by no means improbable. We know what has happened in Cuba during the past year, and this news does not surprise us, it being in our opinion, the finale of a great crisis which has been coming on in the insurgent camp since the citizen, Tomas Estrada Palma became president of our republic, who, according to the Spanish dispatch which we publish elsewhere, has been taken prisoner by a detachment of Spanish troops near Holguin, together with the secretary and several members of the legislative chamber.

"Suffice it to say, that according to all the private information that we have received during the past two months, it seems to be indubitable that President Estrada and the chamber had been deposed by the liberating army, and that they had consequently ceased to perform their official functions. * * * The vitality of the Cuban insurrection does not depend and never has depended upon the government or the chamber; it depends exclusively upon the liberating army. * * * The organization of the liberating army is such that a brigade, a regiment, a battalion, a company, or a party of twenty-five men can operate independently against the enemy in any department, without requiring any instructions save those of their immediate military officers, because their purpose is but one, and that is known by heart, as well by the general as the soldier, by the negro as well as the white man or the Chinese, viz, to make war on the enemy at all times, in all places, and by all means; with the gun, the machete,* and the fire-brand. In order to do this, which is the duty of every Cuban soldier, the direction of a government or legislative chamber is not needed; the order of a subaltern officer, serving under the general-in-chief, is sufficient. Thus it is that *the government and chamber have in reality been a superfluous luxury for the revolution.*"

What an admirable organization was this of the Cuban army, divided up into parties of twenty-five, the majority of them being negroes and Chinese, according to the organ of the insurgents! What wretched military tactics, according to which the use of the machete and the fire-brand was allowable! What consideration and respect appear to have been shown to the executive and legislative branches of the Republic of Cuba by the general-in-chief, who is represented as having deposed those branches and having proclaimed himself dictator! The article in which a full statement of this is made is given entire in Appendix B, that it may be placed on file in the Department of State, since it is too late to submit it to the consideration and examination of those who favor the recognition of the belligerency or independence of Cuba.

This article is full of the passion and exaggeration of the inflammable spirit of the Cuban emigrants who, in the secure asylum of this country, and abusing the generous hospitality of the United States, have for many years been lending aid and comfort to the Cuban insurrection, advocating the extermination of the Spaniards, and upholding the use of the murderous machete and of the torch of the incendiary as the principal means of securing the independence of the island, to which

*For a good definition of this word, see late editions of Webster's Dictionary.

task they are still ardently devoting their efforts, although the contest has been abandoned by those whom these emigrants, without incurring any risk themselves, would have wished to see convert the splendid and rich soil of Cuba into a vast pile of ruins and ashes; but there is a great deal of truth in the description of the character lately presented by the insurrection, and in the description of the insurgent bands, which could no longer be called Cuban, and in the assertion that for such bands and such purposes the chamber and the government were a superfluous luxury.

This being the view taken by the few but still influential Cubans who remained in Camaguey, the center of the insurrectionary movement, and who were fighting for independence, not for the ruin of the island, having more confidence in the well-tried generosity of Spain than in the fatal counsels of the emigrants in this country, in January last they made proposals of peace to the general-in-chief, seeking to obtain a suspension of hostilities in the territorial zone in which the Cuban chamber and government then were, the former being composed of only six members, the latter having been dissolved by the capture of President Estrada, and the general opinion of the people and of the armed force being expressed in favor of the termination of the struggle, only very few dissenting, the majority co-operating in the work of peace, and all intrusting the powers of the republic to a revolutionary committee which was instructed to make proposals of peace to the general-in-chief. By the middle of February a capitulation was reached, the preliminaries of which are not yet known to the undersigned, but whose terms were published in an extra issued by the Havana Gazette, the original of which is transmitted in Appendix C.

The arrangement made with the central committee having been made applicable to all the departments of the island, some of the principal leaders of the insurrection, among them the most prominent of all, Maximo Gomez, put themselves in communication with the other insurgent leaders, with a view of persuading them to put an end to the contest and to capitulate; and the revolutionary committee, which had assumed all the powers of the insurrection, commissioned Brigadier-General Gabriel Gonzales to inform, verbally, representatives in New York of the dissolved government "of the events that had just taken place in the territory of the republic."

Meanwhile the scattered bands of insurgents in Camaguey having been collected, on the 28th of February, which was the day appointed for the surrender, defiled in Puerto Principe before the general-in-chief of the Spanish army, amid the most enthusiastic acclamations, and on the day following, March 1, the undersigned received at New York the following telegram from the captain-general of Cuba:

HAVANA, *March* 1, 1878.

TO THE MINISTER OF SPAIN:

Yesterday all the bands in the department of Principe, to the number of about one thousand men, with an equal number of women and children, surrendered, together with the central committee; also those of Sancti Spiritus and La Trocha, estimated at eight hundred. Other surrenders are expected in a few days. The general-in-chief leaves Principe for the oriental department, in order to accelerate matters.

JOVELLAR.

On the same day tha tthe formerly rebel forces of Camagüey surrendered, Brigadier-General Gonzales arrived in New York, having been deputed by the revolutionary committee of that territory (at the head of whom was the ex-president of the legislative chamber, formerly provisional president of the republic and the author of some of its most

severe decrees, especially of the one against Cubans who should listen to proposals of peace not based upon the recognition of the independence of Cuba) to notify the representatives of the dissolved government of the events that had taken place in the territory of the ex-republic, which representatives, notwithstanding the recent public manifestations of some of them against the probability of the reported surrender of the insurgents without a recognition of Cuban independence, yielding to the irresistible force of facts, recognized as no longer doubtful the dissolution of the Cuban chamber and government, and hastened to declare that "they no longer exercised the functions confided to them by said government."

The document in which this declaration was contained was sent on the evening of the 1st to the newspapers of New York, and was printed in full in the New York Herald of the 2d, and published on the 9th in the Cuban revolutionary organ called La Independencia, in the form shown by the printed slip in Appendix D.

Since that time all the newspapers in the United States have been full of telegraphic news concerning surrenders in Cuba of more or less numerous parties under more or less prominent leaders, concerning hopes of speedy and absolute peace, concerning the feelings of fraternity and forgetfulness of the past now prevailing among those who were yesterday fighting on hostile fields, of which hopes and feelings the consul of the United States at Havana became the organ in a communication of the 5th to the Department of State, an extract from which was published in the Washington papers, and concerning the indignation with which the capitulating Cuban leaders and the sympathizers in Cuba with the cause defended by them regarded the warlike declarations of the uncompromising revolutionists in New York, and the purpose which was publicly expressed by them to organize fresh expeditions to prevent the complete pacification of the island; but the governor, captain-general of Cuba, who acts in everything, especially in matters of so grave a nature as the one in question, with as much sincerity as circumspection, addressed to the undersigned, in that relatively long space of time, the following telegram only:

HAVANA, *March* 19, 1878.

To the MINISTER OF SPAIN *at Washington:*

Yesterday ended the surrender of the insurgent forces of the Villas, whose territory is now entirely free. Those who surrendered were Major-General Roloff, Brigadier-General Maestre, three colonels, fifty-five officers, four hundred and four private soldiers, and about one hundred women and children.

The bands in Bayamo, Manzanillo, and Tiguani had already surrendered on the 8th, with Modesto Diaz, so that the country is completely pacified as far as Holguin.

JOVELLAR.

As is seen by the foregoing telegram, and as may be verified by consulting a map of Cuba, the pacification of the island is far advanced, but it is not yet complete and definitive. Nevertheless, the civil and military authorities of Spain, reciprocating the good faith with which the capitulators of Camaguey fulfilled the terms of their capitulation on the day after they had defiled in Puerto Principe before the general-in-chief of the army, that is to say, the 1st day of March, in strict fulfillment of article 1 of said capitulation, issued a decree of the same date, which was published in the Havana Gazette of the 3d, and which the honorable Secretary of State will find in Appendix E. By this decree it is provided, that the island of Cuba shall be represented in the Cortes of the kingdom at their next session; that its government and local administration shall be modeled according to the municipal and provin-

cial laws of the peninsula, as they are in force in Porto Rico, and that the government of His Majesty shall be requested to introduce in the island of Cuba, in the manner prescribed in article 89 of the constitution of the monarchy, the other laws which have been, or which may hereafter be, promulgated in the peninsula. In virtue of article 1 of the aforesaid decree, the undersigned thinks that, according to the census of its population, Cuba will be entitled to at least twenty deputies in the Cortes, in addition to the senators chosen by the people according to the electoral law, and to those whom it already has of its own right or by virtue of royal appointment.

In the decree in question the phrase is to be noted with which its preamble begins: "The war being now near its end" (not a regular war in the sense in which it is defined by international law, but an intestine struggle, civil contest, or armed rebellion, which, in the military parlance of the Spanish language, is commonly called war); which phrase shows that said military authorities do not consider the contest to be entirely at an end, although its termination is very near. The first sentence in the second paragraph of the same preamble is also noteworthy, in which it is declared that, had it not been for this contest, "Cuba would long since have enjoyed, according to the constitution of the state, the advantages which must necessarily accrue to her from a possible assimilation to the peninsula," which shows that the prevailing sentiment in Spain is in favor of treating Cuba as Porto Rico has been treated; that is to say, like a Spanish province, although she could not grant to rebellious subjects what they demand with arms in their hands, namely, absolute independence during a time of trial for the mother country, nor even what she was always ready to grant them voluntarily, and what she has now granted, at a time of greater prosperity for herself, to them, now that they have repented and sued for peace, which is an act of generosity and a guarantee of reconciliation.

A decree of the general-in-chief of the army of operations in the island of Cuba was also inserted in the Havana Gazette of the 3d.

This was issued at Puerto Principe on the 10th of March, and will be found in appendix F. It guarantees the freedom which was offered in article 3, of the capitulation of all slaves who were in the ranks of the insurgents on the 10th day of February, and who have surrendered or who shall surrender before the 31st day of the current month of March.

Articles 5, 6, 7, and 8 of the capitulation have been fulfilled already, or are now in course of fulfillment, toward all who are willing to take advantage of their benefits. Article 4 requires no immediate action, and article 2 has always constituted the distinguishing trait of the Spanish policy in Cuba. Forgetfulness of the past, pardon of political crimes, release of property embargoed for the same cause, mitigation of the effects of these embargoes as regards the innocent members of the families of those whose property has been embargoed, and even the furnishing of means of subsistence to repentant rebels—all this has been frequently offered or granted by the government and authorities of Spain from the time of the decree of amnesty, issued on the 12th of January, 1869, by the governor, captain-general of the island, Don Domingo Dulce, who was sent by the revolutionary government of 1868 to establish in Cuba the same liberties and franchises that were enjoyed by the peninsula, until the royal decree of October 27, 1877, by which the unimproved public lands, certain forests belonging to the state, and town lands not used, are ordered to be divided among various classes, viz:

1st. Licentiates and volunteers, who have been mobilized or who have taken part in a battle.

2d. Inhabitants of the towns of the island who have remained loyal to the government and who have suffered considerable losses of property in consequence of the war.

3d. *Persons who have voluntarily surrendered to the authorities and forces of the government.*

The reproduction and analysis of all these general acts, and many other private ones of pardon, clemency, and generosity, would render this note interminable, which had no other object, as remarked at the beginning, than to satisfy the desire of the honorable Secretary of State to become accurately acquainted with the present situation of Cuba, but which the undersigned, in his wish to correct false impressions which have been circulated by the conspirators against Spain in this country, has thought proper to extend sufficiently to indicate succinctly the policy of Spain in Cuba and the causes that have given rise to the recent events. Although the government of Spain does not recognize the right of any foreign power to interfere in the internal affairs of that country, it values too highly the opinion of the sensible people of the United States and the friendship of its government for its representative at Washington to neglect an opportunity like the one now offered to present in their true aspect the acts, intentions, and constant policy of Spain in her relations with the island of Cuba.

If it were necessary, or the honorable Secretary of State should desire it, the undersigned would amplify and prove by means of trustworthy documents the assertions which he has just made, and he proposes shortly to show that the only obstacle that can now retard, not absolutely prevent, the complete pacification of Cuba, is the war-cry and the false promises of immediate aid which are once more sent from New York by the Cuban conspirators, who urge in public meetings the continuation of the struggle which is now so near its end. And it is a remarkable fact that in this struggle, by a sad fatality for the liberators of Cuba, a fatality which would not escape, and which has not escaped, the observation of the American people and the perspicacity of its enlightened press, foreigners have been its principal leaders—those who have most zealously maintained it, and who have most distinguished themselves in it. Jordan and Reeve, Americans; Maximo Gomez and Modesto Diaz, Dominicans; Roloff, a Pole; Caoba and Maceo, the one an African and the other a semi African; Prado, the captor of the Moctezuma, a Peruvian; and finally, not to mention any more names, Gonzales, a Mexican, who was deputed by the revolutionary committee of Camagüey to announce the dissolution of the legislative chamber and of the government of the republic to its representatives in the United States. Even the diplomatic commissioner of Cuba abroad, Echerarria, who less than a month ago proclaimed throughout the length and breadth of this great country, by a circular telegram from the Washington agency of the Associated Press, that the news of the submission of the greater part of the insurgent leaders was false, and that they would accept no terms not based upon the recognition of Cuban independence—even that diplomatic agent, whom the honorable Committee on Foreign Relations of the House of Representatives of the United States, having charge of Cuban affairs, received and listened to with interest in the belief that he was a son of Cuba, is no Cuban at all, but a Venezuelan.

If an insurrection composed of such antagonistic elements as the Latin, African, Mongolian, and Anglo-Saxon races, led on by officers of all known nationalities, could have triumphed, the confusion of tongues at the tower of Babel, and the memorable catastrophe which took place in the formerly French portion of the island of Santo Domingo, would

have been cast into the shade by the spectacle which victorious, free, and Africanized Cuba would have presented to the civilized world.

The undersigned avails himself of this occasion to renew to the Hon. William M. Evarts the assurances of his most distinguished consideration.

ANTONIO MANTILLA.

No. 4.

Mr. Mantilla to Mr. Evarts.

LEGACION DE ESPAÑA EN WASHINGTON,
Washington, April 3, 1878.

* * * * * * *

On the preceding day the undersigned received a telegram from the governor-general of Cuba, to the effect that, after much hesitation, Vicente Garcia has refused to make a capitulation. Besides him, as the governor-general observes, there are remaining in resistance to the government in Cuba only Maceo, in the neighborhood of Las Tunas, and Mayary. In the department of Las Villas, the Central, and in part of the Oriental, there is the most complete tranquillity.

The uniform tendency of the semi-official telegrams from Havana, published in the journals of New York on the 28th ult., is to confirm the news that the local disturbances in the eastern and central portions of the island, which have so persistently and unhappily afflicted Cuba during the past ten years, have subsided, and that good order is generally reappearing.

This is substantially the same condition of affairs that was exhibited by the undersigned in his note of the 23d March to the Department of State, in compliance with the invitation verbally expressed by the Hon. Mr. Evarts on the 21st.

The inconvenience and peril of this imperfect condition of internal administration in the eastern portion of the Island of Cuba would be really unimportant to Spain or to the authorities of that island were it not for the relation which such isolated disorder bears to a busy nest of Cuban, Central American, and South American conspirators in the city of New York. As is well known to the distinguished Secretary of State, the three prominent agents of the so-called Republic of Cuba in that city (Messieurs Aldama, Echeverria, and Sanguili) abandoned their illegal functions when the officials in Cuba of that (so-called) "Republic" recently threw aside their absurd pretensions to constitute a government, and confessed that no such government existed. The city of New York has been, since 1869, the real fountain and arsenal of the insurrection in Cuba. Its newspapers were there. Its leading generals were there, and are yet there. There was its financial and military base of operations. Resistance to the constituted authority of Spain in Cuba was kept alive in the eastern part of that island, from 1869 to 1878, chiefly by representations that the powerful government of the United States would in the end, and very soon, come to the aid of the revolt, as against Spain. By various devices, bonds of the so-called "Republic of Cuba," payable whenever that island attained her independence of Spain, were sold in the United States (in violation of public law, because not bought as a *bona-fide* investment of money), and the sums received therefor used in the city of New York to support the revolt in that

city, and also to fit out military enterprises from the shores of the United States against Cuba. The large Cuban immigration in Florida and in New York, chiefly occupied in the manufacture of leaf-tobacco for various uses, was coerced or deluded, for many years, into contributing a portion of its slender earnings to keep alive the Cuban revolt until the United States saw fit to come to its rescue, either by belligerent recognition or in some other way. The pressure of what is known as the "hard times" in the United States (and which has been so generally felt all over Europe) has thrown a great many of these frightened or deluded Cubans out of employment altogether, or has made it impossible for them to have any surplus earnings left, after paying their necessary expenses. These, and other causes, left the conspirators in New York without funds with which to manufacture what was called a "public opinion" in the United States, or to send military enterprises to Cuba; and therefore, of necessity, the revolt in the eastern and central portions of the island straightway began to expire.

* * * * * * *

There are in the United States, and particularly in New York, both Cubans and Americans who seek for their own selfish purposes to reconstitute the insurrection in New York, and fill the places vacated by Aldama, Echeverria, and Sanguili. There are Cuban journals printed in New York in the Spanish language, which even now persist in proclaiming the necessity of continual resistance in Cuba, of assailing the authority of Spain in that island, and in urging the importance of sending as soon as possible military succor to the roving bands of discontented negroes, Chinese, escaped Cuban criminals, and deserters from the army of Spain, who wander about, or in the mountains of the extreme oriental part of the island. Public meetings are held in New York with the same object. These Cuban newspapers and these public meetings organize committees to receive subscriptions of money. They ask the former agents in New York of the so-called Republic of Cuba to surrender to them the funds and other property * * * * of the so-called Republic, which may be in their possession. They publicly solicit the assistance of certain South American governments. What very many, and indeed a great part of these conspirators are doing in New York, is in palpable violation of the neutrality laws of the United States; but the undersigned has not thus far deemed it necessary to formally invite the attention of the President of the United States to these acts, because the undersigned has believed that these acts would be harmless in their character.

* * * * * * *

The Department of State may be assured that the undersigned will cause to be transmitted, for the information of the President, the first official news which is received that the Cuban insurrection is at an end in the eastern part of the Island of Cuba and the city of New York.

The Secretary of State must have observed how promptly and liberally Spain offered pardon and immunity to her erring Cuban subjects on the first intimation of a desire or willingness on their part to throw down their rude arms and submit to the authority of their legitimate and friendly King, like all other Spanish subjects. During these many years Spain has held the same attitude of pardon and forgiveness, if her misguided subjects in Cuba, under the control of wicked and selfish leaders in the United States, would cease resistance and obey the laws of Spain, as Porto Rico obeys them, but their leaders in New York would not permit such surrender, and the unhappy revolt has therefore continued until very recently with no benefit to any one.

The President of the United States may be assured that Spain stands ready to-day to promote the most liberal measures of amnesty to all those who in good faith abandon armed resistance to her authority. Certainly the United States almost as much as Spain herself must desire to see the island again pursuing the paths of good order, contentment, prosperity, and happiness. Cuba is an ancient possession of Spain, and Spain will vindicate the rightfulness and beneficence of that possession. Cuba lies at the doors of the United States. Her products imported into the United States pay a proportion of the customs revenue of this powerful Republic of the West, which too few people understand or appreciate. It is to be hoped that, with a revival of good order and industry in that prolific and beautiful island, the commercial relations between her, as a province of Spain represented in the Spanish cortes at Madrid, and the United States may be drawn closer and closer, to the mutual and abiding interest of Americans and Cubans. To promote this peaceful object is a work to which the undersigned is constantly reminded by his sovereign that he must dedicate his best efforts.

The undersigned avails himself of this occasion to renew to the honorable William M. Evarts the assurances of his most distinguished consideration.

ANTONIO MANTILLA.

No. 5.

Mr. Seward to Mr. Mantilla.

DEPARTMENT OF STATE,
Washington, April 10, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 23d ultimo, regarding the present political condition of the Island of Cuba, and to observe, at the same time, that the statements made by you will be attentively read and carefully considered.

Accept, sir, a renewed assurance of my distinguished consideration.

F. W. SEWARD,
Acting Secretary.

Señor Don ANTONIO MANTILLA, *&c.*, *&c.*, *&c.*

No. 6.

Mr. Hall to Mr. Seward.

No. 663.] UNITED STATES CONSULATE-GENERAL,
Havana, February 16, 1878.

SIR: For a month, at least, previous to the recent festivities, which were ordered to take place in the island in honor of the marriage of the King of Spain, it was currently reported that, during the festivities, peace with the Cuban insurgents would be announced. These reports were not of an official character, and were not generally credited, although it is well known that for a long time General Martinez Campos has been making great efforts to bring about some arrangement with the insurgents whereby they might be induced to lay down their arms.

On the 13th instant there were received from the interior of the island numerous printed supplements, containing what purport to be and are beyond a doubt the bases agreed upon between General Martinez Campos and the so-called "Central Junta of Camaguey," for a treaty of peace, the same having been communicated by Martinez Campos, by telegraph, to General Figueroa, commanding the Villas department, and by the latter transmitted to the several military commanders of Trinidad, Cienfuegos, Remedios, Sagua, and Colon, in each of which places the terms were published and circulated. It caused some surprise that they were not, as is alleged, communicated to Havana, and here published in the usual official form in the Gaceta; the versions which have since appeared in the Havana papers having been taken from those of the interior.

On the 14th instant, however, the Diario published a telegram from its correspondent at headquarters, as follows:

> Peace in the island is a fact about to be realized. Maximo Gomez, *president* of the *Cuban Republic*, the chamber and government, in accord with the Camageyan forces, are at work to establish peace, &c.

This telegram, confirming to a certain extent the news of the previous day, set at rest many doubts which had existed as to the authenticity of the statements from the interior. It caused some surprise and many comments that it should contain a recognition of the "Cuban republic, chambers, and government," hitherto styled bandits, incendiaries, &c., &c.

The terms of the proposed peace are worthy of note. Article 1st provides that the Island of Cuba shall have the same concessions enjoyed by the island of Puerto Rico. With the exception that the latter sends representatives to the Spanish Cortes, it is generally understood that the two islands have the same form of government and administration.

Article 2 is considered ambiguous, and doubts are expressed in reference to it, whether it might not be construed to prevent the return of those who are absent from the island, but who are not undergoing penalties, as also whether it will embrace the unconditional restoration of embargoed and confiscated property.

Article 3d will beyond doubt prove very unsatisfactory to planters and slave-owners.

On the evening of the 14th General Jovellar, accompanied by General Figueroa and other officials, left for Puerto Principe. It is well understood that his departure has reference to pending negotiations with the insurgents.

I further transmit an article from the Diario, of the 14th, which I doubt not will be found of interest.

I have the honor to be, very respectfully, your obedient servant,

HENRY C. HALL.

Hon. F. W. SEWARD,
Assistant Secretary of State, Washington.

Inclosures.

1. Proposed bases of peace negotiations with the Cuban insurgents.
2. Translation of above.
3. Copy of telegram published in the Diario of 14 February, 1878.
4–5. Article and translation from the Diario of the above date.

[Inclosure No. 2 with dispatch No. 663.]

HAVANA, *February* 16*th*, 1878.

[Translation.]

MILITARY COMMANDANCY OF COLON.

His excellency the commandant general of the Villas, by telegram of this date from Trinidad, states the following:

I have this moment received from his excellency, the general-in-chief, the following telegram:

ZANJON, *February* 10, 1878.

I have accorded with the central junta of the Camaguey, which has substituted government and chambers for making peace, the following basis:

ARTICLE 1. Concession to the island of Cuba the same political privileges, organic and administrative, enjoyed by the island of Puerto Rico.

2. Oblivion of the past, as regards political offences committed since the year 1868 up to the present, and the liberty of those under trial or who are fulfilling sentences within or outside of the island. A general pardon to the deserters from the Spanish army, without distinction of nativity; this clause to be extended to all those who have taken any part, directly or indirectly, in the revolutionary movement.

3. Freedom to the slaves and Asiatic colonists now in the insurrectionary ranks.

4. No person who in virtue of this capitulation recognizes and remains within the authority of the Spanish Government shall be compelled to render any service of war, so long as peace is not established in all the territory.

5. Every person who desires to leave the island shall be at liberty to do so, and he shall be furnished by the Spanish Government with the means therefor, without entering a town, if he should so desire it.

6. The capitulation of each force shall take place outside the towns, where the arms, implements of war, shall be laid down.

7. The general-in-chief of the Spanish army, in order to facilitate the means for uniting the other departments (in this convention) shall make free all the means of communication, by sea and land, that he can dispose of.

8. The agreement made with the central junta shall be considered as general, and without special restrictions, for all the departments of the island which accept these propositions.

I make it known to your excellency, for the information of yourself and of the troops under your command, with the understanding that operations shall be suspended, the troops being restricted to acting upon the defensive and to escorting convoys.

In the event of any of our forces falling in with the enemy they will make known to him these bases without firing upon him.

Your excellency will also order that experienced guides shall go out immediately with these instructions and make them known to the chiefs of the opposing forces, until the commissioners of the central junta for that purpose, who have this jurisdiction, shall arrive.

By order of his excellency the general-in-chief.

The chief of staff.

PRENDERGAST.

Which I have the satisfaction of communicating to your highness for information and order that it may be published by the newspapers of that locality by means of extras or other means which the zeal of your highness may suggest, in order that such an important event may become known to the inhabitants of that jurisdiction, and remitting printed copies also to the chiefs of columns in operations for its greater publicity.

FIGUEROA.

All of which I have the satisfaction to make public for the general information of the loyal inhabitants of this jurisdiction.

COLON, 11*th February*, 1878.

JUAN DOMINGO,
Colonel, Military Commandant.

[Inclosure No. 3 with dispatch No. 663.]

HAVANA, *February* 16, 1878.

[Translation.]

[From the "Diario de la Marina" of 14th February, 1877.]

We have just received the following telegram from the correspondent of the press, at headquarters, which says more than we could say in commenting upon it:

"SANTA CRUZ, 12*th February.*

"Director del 'Diario de la Marina,' Habana"

"The peace of the island is now a fact about to be realized. The president of the Cuban Republic, Maximo Gomez, chamber and government in accord with the force of the Camaguey, are at work to realize peace. Also, in the Villas and Oriental departments. For those two departments commissions of important chiefs have left with that object. Hostilities suspended in all the island.

"FLORES."

[Inclosure No. 5 with dispatch No. 663.]

HAVANA, *February* 16, 1878.

[Translation.]

[From the Diario de la Marina of 14th February, 1878.]

WAR AND PEACE.

The present situation of the island is about to undergo a change. Generals Martinez Campos and Jovellar, who contributed so efficiently to the pacification of the peninsula, in all probability (and which we hope may soon become a palpable reality) will have at last been able to break the hundred heads of the hydra of the war which has caused so much desolation; the one with his indefatigable activity, with his conciliatory character, patience and constancy, the other with his tact for command, with his determination to re-enforce the action of the former in providing him as far as was humanly possible, with all the resources he needed; with his well known tolerance, his affability, his sound judgment, he having by mere force of his skill, been able to quiet excited spirits (for there are wars no less prejudicial than those of battle fields), and in maintaining complete tranquillity among the populations of all the cities.

To the government of His Majesty which, having reposed its confidence in these illustrious men, and having permitted them to act without placing any obstacle in their progress, as it would have done if it had pretended, in the great crisis through which they have passed, to direct absolutely the issues, will have had no insignificant part in the great result which we trust before long to see announced officially. At times in governing but little, more governing is accomplished, for the reason that all the details cannot be appreciated from a great distance.

The two purposes which both generals undertook to carry out were to quiet excitement, time having demonstrated that it creates rather than removes difficulties, and in vain can it be expected that the passions can accomplish what exclusively pertains to reason and judgment; the other to subjugate the enemy, not altogether by violence and the shedding of blood, but with benignity combined with energy, with the proper distribution of troops, reestablishing discipline in all its rigor wherein it might be suspected of having relaxed, were difficult, very difficult undertakings, although there are some views which do not cause the same effect when near as when seen at a distance, while the most admirable works of art are not appreciated so much when just created as after a lapse of time and the mind can judge of them dispassionately without the preventions of sympathy or antipathy caused by the envy or emulation of contemporary artists.

This is what our judgment, the result of a long series of observation, tells us, because we have always preferred above all things to be eminently practical.

The glory from these happy results which we definitely look for, as our estimable colleague the Voz de Cuba in its well-reasoned article, says, pertains in a great measure to Generals Jovellar and Martinez Campos, for among all the services that can be rendered to a country the greatest of all is that of restoring to it peace; because war is the cause of every calamity which can sadden and afflict a people.

The poet Aristophanes has represented war under the figure of a gigantic monster, armed with a pestle and mortar in which he pulverizes not only cities but their inhabitants. A French author calls war "the sister of death and the law of the robbers," and in all centuries it has been the horror of nations. Nations need peace, because they can live only by labor and industry, and there is no heart so insensible as not to be horrified by its desolations, by the sinister lights of its conflagrations, and its blood and carnage.

Peace is the symbol of order; and without order all is confusion; without peace it is impossible that public interests be developed, nor can any measure for increasing the public wealth be carried out. War absorbs everything; it consumes the very elements that nurture it.

What would be the flourishing condition of Cuba if the immense sums that have been spent in sustaining the strife, which for more than nine years has disturbed us, without excluding what it has cost the enemy, however limited his resources, if those sums had been invested in works of public utility and in the development of our industries? What would be the aspect of Havana and of the principal cities of the island?

When wars have for their object the removal of obstacles to the prosperity of a decaying country, or for bettering the condition of the needy classes if over them weighs the iron arm of indigence, they have an honest pretext; but when that impulse controls, the works which represent the labor of centuries are not destroyed.

Only ambition, the negation of every generous impulse, and the most abominable cruelty would influence the minds of those who would not rejoice before the proximity of peace.

And it is a proof of what we say, that Turkey, which has given ostensible proofs of heroism in the war of the Titans she has sustained, prefers the humiliation of defeat to the continuation of a series of disasters, which in the end, could be no other than the complete destruction of all her territory and the loss of life and of her political existence in the concert of nations.

Welcome, then, peace above all, and with peace the greatest difficulties can be overcome tranquilly.

Those whom Divine providence has selected as the instruments of His omnipotent will to restore to us that great blessing, merit well of the country and the pure and disinterested love of all the good.

No. 7.

Mr. Hall to Mr. Seward.

No. 664.] UNITED STATES CONSULATE-GENERAL,
Havana, February 23, 1878.

HON. F. W. SEWARD,
Assistant Secretary of State, Washington:

SIR: With my dispatch No. 663 of the 16th instant, I transmitted a copy and translation of the proposed basis of negotiations for peace between Spain and the Cuban insurgents. I stated therein, that these terms had not then been published officially in the Havana papers. On the 19th instant, however, the same were published in a supplement of the Gaceta, and again, on the 20th in the paper itself as per copy and translation herewith. The authenticity of the document being fully established, I thought proper to advise the department by the cable, as follows:

HAVANA, *February* 19, 1878.

Secretary of State, Washington:

The bases of negotiations for peace and surrender of insurgent forces are published here to-day officially. There appears no doubt whatever that peace will be realized.

HALL.

I am further informed by the consul at Santiago de Cuba, that Maximo Gomez and the two other insurgent chiefs had arrived at that place, on the 16th instant, *en route* for the insurgent camps in that department with the purpose of inducing the forces, still in arms, to accept the proposed bases. There is but little doubt that they will be successful and that ere long peace will be fully established.

In my dispatch No. 663, I had occasion to refer to the dissatisfaction created among planters and slave-owners by the 3d article of the proposed bases; it was asserted that General Jovellar's departure for Puerto Principe was with special reference to that article, the members of the

casino, it was said also, were to have an extraordinary meeting with the view of expressing their opinions, which were understood to be in opposition to the proposed terms, and especially to the 3d article of the bases. But whatever may have been their original intention, the result of the meeting was the transmission of congratulatory telegrams to Spain and to General Martinez Campos, and a general manifestation of hearty approval of all his efforts in obtaining a termination so satisfactory of existing difficulties.

In connection with the foregoing, I beg to invite your attention to an article under, the head of "La Paz," published in the Voz de Cuba of the 19th instant, in which it is claimed that the surrender of the insurgents is the result of their own motion, and not of any proposal emanated from General Martinez Campos. The article referred to makes some comparisons which are also worthy of attention, although quite out of place. I regret that I am not able to furnish a full translation by this mail.

It is also known that, by the steamer leaving to-day for New York, an authorized agent of the central committee of the Cuban Government has taken passage for the purpose of conferring with the Cuban junta in the United States.

I have the honor to be, sir, very respectfully, your obedient servant,

HENRY C. HALL,
Consul-General.

[Inclosure No. 1 with dispatch No. 664.]

HAVANA, *February* 23, 1878.

GACETA EXTRAORDINARIA.

TUESDAY, *February* 19, 1878.

General Government of the Island of Cuba:

For the information and satisfaction of the public, there are published the following bases conceded by his excellency the general-in-chief in accord with this government, for the capitulation of the forces of the insurrection still in arms. These bases are a sure guarantee of an immediate peace, as glorious for the illustrious general who has had the direction of the war, for the army, as honorable and generous for the capitulating forces, and necessary, above all, for the country, which by favor of these terms will be able, after long years of perturbation, to reach the termination of its extraordinary sacrifices, and to dedicate anew the whole of its productive forces to the development of its paralyzed prosperity.

BASES.

Article 1. Concession to the island of Cuba the same political privileges, organic and administrative, enjoyed by the island of Puerto Rico.

2. Oblivion of the past as regards political offences committed since the year 1868 up to the present, and the liberty of those under trial or who are fulfilling sentences within or outside the island. A general pardon to the deserters from the Spanish army, without distinction of nativity. This clause to be extended to all those who have taken any part, directly or indirectly, in the revolutionary movement.

3. Freedom to the slaves and Asiatic colonists now in the insurrectionary ranks.

4. No person, who in virtue of this capitulation recognizes and remains within the authority of the Spanish Government, shall be compelled to render any service of war, so long as peace is not established in all the territory.

5. Every person who desires to leave the island shall be at liberty to do so, and he shall be furnished by the Spanish Government with the means therefor, without entering a town if he should so desire it.

6. The capitulation of each force shall take place outside the towns, where the arms, implements of war, shall be laid down.

7. The general-in-chief of the Spanish army, in order to facilitate the means for uniting the other departments (in this convention), shall make free all the means of communication, by sea and land that he can dispose of.

8. The agreement made with the central junta, shall be considered as general and without special restrictions for all the departments of the island which accept these propositions.

HABANA, 19*th February*, 1878.

JOVELLAR.

No. 8.

Mr. Seward to Mr. Hall.

No. 440.] DEPARTMENT OF STATE,
Washington, February 26, 1878.

To HENRY C. HALL, Esq.,
Consul-General of the United States, Havana, Cuba:

SIR: I have to inform you of the receipt of your telegram of the 19th inst., of which the following is a copy: "Secretary of State, Washington: The bases of negotiations for peace and surrender of insurgent forces are published to-day officially. There appears no doubt, whatever, that peace will be realized. Hall."

I am, sir, your obedient servant,

F. W. SEWARD,
Assistant Secretary.

No. 9.

Mr. Hall to Mr. Seward.

No. 666.] UNITED STATES CONSULATE-GENERAL,
Havana, March 2, 1878.

SIR: With reference to my dispatches Nos. 663 and 664, of the 16th and 23d ultimo, I now transmit copies and translations of several official reports of the surrender of portions of the Cuban insurgent forces at Puerto Principe, Sancti Spiritus, La Trocha, and other places in the central department of the island. From these statements it appears that, on the 28th ultimo, the Cuban insurgent forces of the Camaguey district, or a part of them, surrendered at Puerto Principe to General Martinez Campos; their number is not given in the telegram, but I have been informed by General Jovellar that about one thousand men, with the central committee or junta (comprising about all that remains to represent the late Cuban Government), passed in review and were disbanded. On the 1st instant, yesterday, other bodies of the insurgents, to the number of eight hundred men surrendered at the Trocha, and in Sancti Spiritus. Some of the forces scattered through the Villas department, it is said, are being collected prior to a final surrender and disbandment. It would seem, therefore, that the forces of the Villas and central departments, comprising the half or more of the late insurrectionary district, have accepted the terms of reconciliation, and that in those departments, at least, the insurrection has virtually terminated. There still remain the forces of the oriental department which have not yet been heard from, but it is not probable that these forces will hold out after the surrender of the main body, and in fact of the very nucleus of the insurrection. I respectfully call your attention to the important decrees published in the Gaceta Oficial of this date, and of which I will forward translations in my next. The first of these decrees delares that the island of Cuba shall have representation in the Spanish Cortes on the same conditions as those existing in Puerto Rico. It provides also for the establishment of the same provincial and municipal laws now ruling in Spain, and in Puerto Rico. The second decree, which is in conformity with article 3d of the bases

of capitulation of the insurgent forces, provides for the freedom of the slaves who were in the insurrection, on the 10th February ultimo, and who shall present themselves in any form to the authorities, or to the troops of the government before the 31st instant.

I have, &c.,

HENRY C. HALL,
Consul-General.

[Inclosure.—Translation.]

From the Voz de Cuba, of 2d March, 1878.

INTERESTING NEWS.

Our readers will have seen in the morning edition the telegram dated 28th February, sent us by the correspondent of the press in campaign from Puerto Principe; the late hour in which we received it gave us time only to insert it, and we omitted our comments in order that our subscribers might receive, in time, the grateful news it contained. When our number was already in press, we received from the general government, for publication, the following telegram, confirming officially all that an active correspondent had sent us.

Captaincy-General of the ever-faithful Isle of Cuba Staff.

His excellency the general-in-chief of the army in operations, in a telegram dated Puerto Principe, 3 p. m. to-day, says to his excellency the captain-general the following:

"At 2 p. m. of to-day the surrender of the Cuban forces and arms at this jurisdiction has commenced. Published by order of H. E. for general information. Habana, 28th February, 1878.

"The brigadier chief of staff: PEDRO DE CUENCA."

The capitulation has been carried out on the day announced in the Camaguey and in the Trocha; and peace, in those two vast departments, is a reality. As can be inferred from the telegraphic dispatch of our correspondent, more than a thousand persons, four hundred of them armed, have presented themselves in the Camaguey, and in the official dispatch it is said that at their head were the chiefs and deputies. We do not know the number of the forces which have laid down their arms in the camp "Ojo de Agua," but it is to be presumed that the number is, in all, about the same as that of the forces of the Camaguey. The following from the dispatch of our correspondent, "The chiefs who have not surrendered embark for foreign ports to-day," indicate, in our judgment, that there may have been some chief who has not yet accepted the bases and has not wished to remain in the island; whichever way it may be. his departure, which will have taken place at this hour, puts an end to all further interior dissidence. In regard to the Oriental department, it is to be expected that we will soon receive news of the capitulation of the forces therein, as by this time conferences will have taken place between their chief and the commissioners *ad hoc* to conclude it. The pacification of all the island will soon, therefore, be a consummated reality, as it already is in the Central and the Villas departments. May God grant that, with peace, Cuba may enter upon a new era of prosperity and happiness.

TELEGRAMS RECEIVED AT THE CAPTAINCY-GENERAL.

SANCTI SPIRITUS, 1*st March*, 1878.

To-day the forces of Jimenez and Sanchez, numbering 425 men, 71 women, and 30 children, have surrendered their arms at Ojo de Agua, near this place. To-day or to-morrow Lieutenant-Colonel Arias should arrive with the object of surrendering at once, and of which I will report to your excellency. The forces of the Remedios, at the orders of Carrillo, are collecting at Ciego Potrero, and will surrender on the 5th. The forces of José Gomez should surrender to-day at the Trocha, according to the order of Jimenez.

SANTA CLARA, 1*st March*.

To the chief of the battalion of Leon at Cumanayagua:

More than 400 men, with 6 chiefs, among them Pancho Jimenez and Serafin Sanchez, laid down their arms yesterday afternoon at Ojo de Agua.

HOLGUIN, 1*st March*.

Colonel Dominguez returned to-day, having collected those arrived at Guabajanuy, of all which he has reported. He brought 57 men, besides 22 others armed, 22 women, and 35 minors.

No. 10.

Mr. Hall to Mr. Seward.

No. 667.] UNITED STATES CONSULATE-GENERAL,
Havana, March 2, 1878.

SIR: Referring to my No. 666, I have the honor to transmit herewith copies and translations of two important decrees which appear in the Gaceta of to-day.

The first of these decrees provides for the representation of Cuba in the next Cortes of Spain, upon the same conditions which are now applied to the island of Puerto Rico; it also provides for the extension to Cuba of the municipal and provincial law of the 2d of October, 1877, now in force in Spain and in Puerto Rico.

The second decree or edict, issued by General Martinez Campos, declares that all the slaves, of both sexes, found in the insurrection on the 10th February ultimo, and who shall present themselves to the civil or military authorities of the government before the 31st day of March, 1878, shall be free and provided with vicinage certificates to that effect.

It provides also for indemnity, in due time, to those owners who have remained loyal to the government during the insurrection.

I am, sir, very respectfully, your obedient servant,

HENRY C. HALL,
Consul-General.

Hon. F. W. SEWARD,
Assistant Secretary of State, Washington.

[Inclosure No. 1 with dispatch No. 667.]

HAVANA, *March 2*, 1878.

[From the Gracete de la Habana of March 2, 1878.]

GENERAL GOVERNMENT OF THE ISLAND OF CUBA.

The war, which for a period of more than nine years has demanded the preferent attention, subordinating to its vital interest every thought and every measure of the government, being near its termination and peace being happily inaugurated upon conditions of concord in the future, the opportune moment has arrived, at last for carrying out known purposes, which, on account of perturbations, have been postponed, and consequently to introduce into the present organic political and administrative system of the island all those reforms which without prejudice to the unity and prerogatives of the central authority may facilitate, by means of the action of popular corporations disencumbered, within the circle of loyality, the complete development of municipal and of provincial organization.

A long time ago, but for the war, in consonance with the provisions in the constitution of the state, Cuba would have enjoyed the advantages which, necessarily, assimilation as far as possible with the peninsula would have given her; and, aside from certain reforms of social character which are by circumstances subject to special laws and to definitive solutions of profound study in everything, relating to representation in the Cortes, the island would have been in a situation analogous to Puerto Rico.

The only opposing obstacle being removed, it becomes natural and logical to recognize the administration in the sense referred to, and to invite to the participation of public life, in behalf of the country, all the constitutive elements of the new institutions.

In accord, therefore, with his excellency the general-in-chief, and authorized by the government of His Majesty the King, I issue the following

DECREE:

ARTICLE 1. Commencing with the next coming legis'ature, the island of Cuba shall have its representation in the Cortes of the Kingdom upon the same terms with Puerto Rico and in accordance with its population.

ARTICLE 2. The provincial and municipal laws of the peninsula of 2d October, 1877, published in the Gaceta de Madrid of the 4th of the same month and year, shall also be adopted in its government and administration in the manner now in force in Puerto Rico.

ARTICLE 3. The government of His Majesty will be solicited to apply to this island in succession, with the modifications it may deem expedient and in virtue of the provisions of article 89 of the constitution of the monarchy, other laws already promulgated or which may be promulgated for the peninsula.

JOAQUIN JOVELLAR.
ARSENIO MARTINEZ CAMPOS.

HAVANA, 1*st March*, 1878.

[Inclosure No. 2, with dispatch No. 667.]

[Translation.]

From the Gaceta de la Habana, of March 2, 1878.

ARMY OF OPERATIONS OF THE ISLAND OF CUBA.

The insurgents of the central department and of the commandancy-general of the Trocha, having laid down their arms, and in expectation that their example will be followed soon by the others in the island;

The day, therefore, of the long wished for peace being near, and desiring to signalize the happy event by a new proof of the firm purpose which animates the government of His Majesty to continue in the road of progress long since undertaken, avoiding at the same time possible derangements of social order and of measures adopted in the period of the war;

Having in view the sentiment which inspired the present law of the gradual emancipation of slavery in this Antilla;

Considering, besides, that the majority of those slaves, who, for any cause, are to-day in the insurrection, have not figured in the census made in 1870 for classifying their legal status, or otherwise, that may have belonged to owners who, in taking an active or indirect part in the Cuban revolution, declared, in fact or by their own will, the freedom of their slaves; and, on the other hand, taking into consideration their condition, that at that time they had no civil or political responsibility; and finally recognizing the right of those owners who have maintained complete fidelity to the national cause to indemnification by the state, in sacrificing to other expediencies their legitimate property;

Authorized by the government of His Majesty the King, and in accord with his excellency the governor-general of the island, I issue the following

EDICT:

ARTICLE 1. All slaves of both sexes that may have been found in the insurrection on the 10th day of February shall remain free if they present themselves in any form to the legitimate authorities or troops of the government before the 31st day of the present month of March.

ARTICLE 2. The legitimate owners of those freedmen who have taken any part or have aided in any way, that can be proven, the insurrection, shall have no right to any indemnification in the premises.

ARTICLE 3. The lawful owners of the said freedmen who are not comprised in the preceding article shall be indemnified in due time in conformity with what is ordered in the law of gradual emancipation.

ARTICLE 4. The local authorities shall issue certificates of vicinage as free citizens to those slaves who present themselves and are found to be comprised in article 1, giving a detailed and direct account to the respective commandancies-general, which will act in concert with the local juntas of freedmen in regard to their new status.

Puerto Principe, 1st March, 1878.

ASENIO MARTINEZ CAMPOS.
JOAQUIN JOVELLAR.

No. 11.

Mr. Hall to Mr. Seward.

No. 668.] UNITED STATES CONSULATE-GENERAL,
Havana, March 5, 1878.

SIR: With reference to my dispatches No. 664, of the 23d ultimo, and No. 666, of the 2d instant, relating to the surrender of the Cuban insurgents, I beg to transmit herewith an article, from the Diario of this date, containing about all of interest that has transpired since forwarding my last-mentioned dispatch. The reports received thus far are very meager; it would seem, however, that up to the present, two thousand and upwards of the insurgents have laid down their arms. There still remain to be accounted for the several forces in the eastern department and in the department of the Villas, whose numbers are variously estimated at from two to four thousand. There is no doubt, I imagine, that these bodies will soon give in their adhesion, and with it the insurrection of Yara, which has existed over nine years, may be said to have ended. The terms given the insurgents are considered honorable to them as well as to Spain. It is noticeable also that the rancors and animosities, which existed between Cubans and Spaniards during the first years of the war, have to a great extent disappeared. The time is therefore propitious for the voluntary introduction of the long-promised reforms in the government of the island.

I have, &c.,

HENRY C. HALL,
Consul-General.

[Inclosure.—Translation.]

From the Diario de la Marina, of March 5, 1878.

NEW ADHESIONS TO THE CAPITULATION

We have said that the war is virtually terminated, by reason of the resignation of the authorities from whom emanated the powers of all those who had command of the forces of the revolution, or discharged special commissions in Cuba or abroad; even in the event that the latter might not be convinced of the sterility of their efforts in sustaining the ideas they entertained, they could not do otherwise than to follow the example of the most prominent men of the Cuban forces, although they might not agree to exchange their status for another which carried with it a loss of personal prestige; authority cannot exist when it has lost the nucleus which sustains it. We are not surprised, therefore, at the news we have received, that Aldama, Echevarria, and others who held official positions in New York had decided to resign when they were informed of what had occurred in Cuba by the emissaries of the central Cuban committee, appointed for the purpose of making peace, We have given an account to our readers of the surrender of their arms by the Cuban forces in the jurisdiction of Sancti Spiritus, in consonance with what had been done previously by the division of the central department; the same will also be carried out on the 6th by scattered forces in the territories of Sagua, Santa Clara, Cienfuegos, and Colon, which, by order of their chief, Maestre, are to unite on that day at a point previously fixed upon near Paso Real. The information we have by correspondence from Santo Domingo just received, and which besides confirms other news of the same nature communicated to a person whom we consider well informed. In the said letter it is stated, also, that at the time the order was given to the subaltern chiefs, in command of squads, to commence the movement of concentration, they were also instructed to suspend hostilities, and that the news of peace becoming circulated in the ranks, there were many who manifested joy at the prospect of soon returning to their families and of rest from fatigues and privations. On the other hand the commandant general of those forces, a person of great influence among his subordinates, is animated by the same conciliatory spirit of which the capitulated chiefs have given proofs, so that with these antecedents it can be assured that the mission of the envoys sent by the central Cuban committee to con-

fer with the commanders beyond the Trocha will meet the success that was to be expected. As we informed our readers at the time, one of the chiefs who most merited this confidence is the renowned Marcos Garcia who, according to a letter we received a few days ago from Santa Clara, has manifested the greatest zeal and interest in behalf of peace, having omitted neither means nor efforts in obtaining an interview with Maestre, and it is not to be doubted that he will follow the example of his other companions on the designated day, so near to hand. It is truly providential that the Cuban chiefs who have most distinguished themselves in the war happily terminated, should be the ones who, with the greatest enthusiasm, have embraced the idea of peace, and the ones who have most efficiently contributed to the realization of a pacification of the island; for which important service they merit the general approbation of the country. To these adhesions we are able to add another important one which we copy from the Periguero de Holguin of the 28th February, as follows: "We know that Modesto Diaz has accepted the bases of the peace, and is now in Manzanillo, where he has embraced his countryman the Brigadier Francisco Heredia, chief of the second brigade of the commandancy-general of Bayamo and Manzanillo."

No. 12.

Mr. Seward to Mr. Hall.

No. 448.] DEPARTMENT OF STATE,
Washington, March 12, 1878.

SIR: I have to acknowledge the receipt of your dispatches Nos. 666 and 667, both bearing date of the 2d inst., and to state that the substance of the two decrees of the Spanish authorities accompanying the latter dispatch, issued on the occasion of the termination of the Cuban insurrection, has been communicated to the press.

I am, sir, your obedient servant,

F. W. SEWARD,
Assistant Secretary.

To HENRY C. HALL, Esq.,
Consul-General of the United States, Havana, Cuba.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 80.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of May 10, 1878, *information in relation to the suspension of the receipt of deposits at the several mints for coinage into trade-dollars in October*, 1877.

MAY 15, 1878.—Referred to the Committee on Finance and ordered to be printed.

TREASURY DEPARTMENT,
May 14, 1878.

SIR: I have the honor to acknowledge the receipt of Senate resolution of May 10, 1878, as follows:

Resolved, That the Secretary of the Treasury be requested to furnish the Senate with a statement of the circumstances under which the receipt of deposits at the different mints for coinage into trade-dollars was suspended in October, 1877, together with copies of all correspondence in relation to the same—

and to inclose herewith copy of a report in the matter, dated May 13, 1878, with accompanying papers, from the Director of the Mint, to whom the resolution had been referred.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. W. A. WHEELER,
President of the United States Senate.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., May 13, 1878.

SIR: I have the honor to acknowledge the reference to this office for report of the following resolution of the Senate of the United States, viz:

IN THE SENATE OF THE UNITED STATES,
May 10, 1878.

Resolved, That the Secretary of the Treasury be requested to furnish the Senate with a statement of the circumstances under which the receipt of deposits at the different mints for coinage into trade-dollars was suspended in October, 1877, together with copies of all correspondence in relation to the same.

The receipt at the mints of deposits of silver for returns in trade-dollars was suspended in October last, for the reason that the coinage of those pieces was in excess of the export demand, and for the additional

reason that, owing to the decline in the price of silver and the appreciation of United States notes, trade-dollars were being placed in domestic circulation, contrary to the intention of the law authorizing their coinage.

Copies of all correspondence on the subject are herewith transmitted, and the resolution of the Senate returned.

Very respectfully,

H. R. LINDERMAN,
Director.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., October 15, 1877.

SIR: The second section of the joint resolution for the issue of silver coin, approved July 22, 1876, authorizes the Secretary of the Treasury to limit, from time to time, the coinage of trade-dollars to such an amount as he may deem sufficient to meet the export demand for the same.

On the 12th April last, there being at that time an export demand for the trade-dollar at New York City, you authorized the receipt of deposits at the Philadelphia mint and the assay office at New York for coinage into trade-dollars.

The export demand appears to have entirely ceased, and there are uncoined deposits at the Philadelphia mint, for that coin, to the amount of nearly one-half million dollars.

Under these circumstances, I am of the opinion that no further deposits for trade-dollars should, for the present, be received, and I respectfully request your authority to instruct that mint, and the assay office at New York, to discontinue, until further orders, the receipt of deposits for trade-dollars.

The order requested will not apply to the mints at San Francisco and Carson.

I have the honor to be, very respectfully,

H. R. LINDERMAN,
Director.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

[Indorsement.]

TREASURY DEPARTMENT,
October 15, 1877.

Returned to the Director of the Mint.

Your request is approved, and you may give the necessary instructions to the Philadelphia mint and the assay office at New York to discontinue until further order the receipt of deposits for trade-dollars.

JOHN SHERMAN,
Secretary.

BANKING-HOUSE OF SAILOR & STEVENSON,
46 *South Third Street, Philadelphia, October* 12, 1877.

DEAR SIR: We frequently make deposits of silver bullion in the mint for trade-dollars, and find, after making our deposits, that we have to experience considerable delay in getting them, owing to the fact of the large deposits for trade-dollars from New York. These deposits for large amounts virtually monopolize the mint for a considerable time to the exclusion of others, and could not some arrangement be made by which from 20,000 to 30,000 a week be paid to Philadelphia depositors?

The officers of the mint have shown every desire to accommodate us, but say, according to instructions, they are compelled to fill these large orders before paying any others.

Your favorable consideration of the matter would be duly appreciated.

Very respectfully,

SAILOR & STEVENSON.

Hon. H. R. LINDERMAN,
Director of the Mint, Washington, D. C.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 16, 1877.

SIR: You are hereby instructed to discontinue, until further orders, the receipt of deposits of silver bullion for coinage into trade-dollars.

Respectfully,

H. R. LINDERMAN,
Director.

P. S.—The above to take effect upon receipt of these instructions.

H. R. L.

THOMAS C. ACTON, Esq.,
Superintendent United States Assay Office, New York.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 16, 1877.

SIR: You are hereby authorized to discontinue, until further orders, the receipt of deposits of silver bullion for coinage into trade-dollars.

Respectfully,

H. R. LINDERMAN,
Director.

P. S.—The above to take effect upon receipt of these instructions.

H. R. L.

Hon. JAMES POLLOCK,
Superintendent United States Mint, Philadelphia.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 15, 1877.

GENTLEMEN: In reply to your letter of the 12th instant, I have to inform you that the law requires payment of deposits according to priority, and that there is no discretion in the officers of the mint to depart from the same.

It is possible, however, that the superintendent of the mint may be able to respect the law as to priority of deposits from the New York assay office and at the same time meet your requirements. You are advised to see that officer upon the subject.

Respectfully,

H. R. LINDERMAN,
Director.

Messrs. SAILOR & STEVENSON,
46 *South Third Street, Philadelphia.*

BANKING-HOUSE OF SAILOR & STEVENSON,
46 *South Third Street, Philadelphia, October* 17, 1877.

DEAR SIR: Your favor 15th instant to hand; contents noted, and for which we are obliged.

We are informed to-day by the officers of the United States mint that they have received orders to take no more deposits for trade-dollars. One and two dollar notes have been exceedingly scarce for some time back, some of our banks having been compelled to pay a premium for them. This scarcity has been felt all over the country, but as Philadelphia is a manufacturing city it has been probably more severely felt here. The issue of the trade-dollar has, to some extent, relieved the demand. The people seem desirous of them, and only to-day an officer of one of the banks, who had received an amount of them, on hearing of the discontinuance of their coinage, expressed to us his great concern as to what the bank would do to accommodate their customers for small payments.

We think a splendid opportunity is here offered for the Director of the Mint to cut the "Gordian knot" of discussion in regard to the remonetization of the silver dollar. Quite a number of manufacturers and banks have depended on us to supply them with these coins for their weekly pay-rolls, and we think if you could see proper to rescind your order for their discontinuance, or extend the time somewhat, you would confer a favor on the general public, and perhaps settle a question that has occupied the atten-

tion of the country for some time past. We have it as the opinion of one of our most prominent bank presidents that the circulation of the trade-dollar at this time was acceptable as tending to familiarize the people to their use in advance of their remonetization should Congress so decide.

Hoping for a favorable consideration, we remain,

Yours, respectfully,

SAILOR & STEVENSON.

H. R. LINDERMAN, Esq.,
Director of the Mint, Washington, D. C.

NEW YORK, *October* 18, 1877.

SIR: We have received notice this day from the superintendent of the mint at Philadelphia that he has been ordered to discontinue, until further orders, the receipt of deposit of silver bullion for coinage into trade-dollars.

Please inform us about when deposits for the above purpose will again be received.

Yours, respectfully,

JAS. B. COLGATE & CO.,
Per J. H. H. NESSLAGE.

Dr. H. R. LINDERMAN,
Director of the Mint, Washington, D. C.

[Telegram, cipher.]

SAN FRANCISCO, *October* 18, 1877.

H. R. LINDERMAN,
Director of Mint, Washington, D. C.:

Has gother stopped coining Hawk—will this continue—impulse here.

HARRIS.

[Translation.]

SAN FRANCISCO, *October* 18, 1877.

H. R. LINDERMAN,
Director of Mint, Washington:

Has Philadelphia mint stopped coining trade-dollars? Will this continue? Are you likely to purchase silver soon?

F. F. LOW.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., October 19, 1877.

SIR: We have now on hand, at the San Francisco mint, an amount of trade-dollars sufficient to meet any export demand likely to arise in the immediate future, and as these coins are being furnished by depositors at par in exchange for currency and thus interfering with the circulation of half and quarter dollars, it is quite clear that the San Francisco and Carson mints should discontinue for the present the receipt of deposits for coinage into trade-dollars. I therefore respectfully request that you will authorize a discontinuance of the receipts of deposits for coinage into trade-dollars.

In this connection I would also respectfully recommend the purchase of doré bullion at the San Francisco mint sufficient to give 500,000 ounces fine silver, and 300,000 ounces at the Carson mint, at the lowest market rate, and not exceeding the equivalent of the London rate, less 1 cent per ounce fine.

This silver, if purchased, to be manufactured into fractional silver coins.

Silver was quoted yesterday in London at $54\frac{3}{4}$ pence per ounce, British standard.

I have the honor to be, very respectfully,

H. R. LINDERMAN,
Director.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

[Indorsement on above.]

TREASURY DEPARTMENT, *October* 19, 1877.

The recommendation for the discontinuance of receipt of deposits of silver for coinage into trade-dollars at the San Francisco and Carson mints is approved, and orders will issue accordingly.

JOHN SHERMAN,
Secretary.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 19, 1877.

GENTLEMEN: In reply to your letter of yesterday, I have to inform you that it is not probable that the receipt of deposits for trade-dollars will again be authorized until a demand for that coin for export shall arise.

I may add that the law does not contemplate the coinage of trade-dollars for circulation as money in the United States, and that that coin is not a legal tender.

Respectfully,

H. R. LINDERMAN,
Director.

J. B. COLGATE & CO.,
47 *Wall Street, New York.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 19, 1877.

SUPERINTENDENT MINT, *San Francisco:*

You are hereby instructed to discontinue the receipt of deposits of silver bullion for coinage into trade-dollars until further notice.

H. R. LINDERMAN,
Director.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 19, 1877.

SUPERINTENDENT MINT, *Carson, Nev.:*

You are hereby instructed to discontinue the receipt of deposits of silver bullion for coinage into trade-dollars until further notice.

H. R. LINDERMAN,
Director.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., October 19, 1877.

GENTLEMEN: I have received your letter of the 17th instant, in which you urge the rescinding of the order for discontinuing the receipt of deposits at the mint for returns in trade-dollars.

The law contemplates that the trade-dollar shall be coined only to meet export demand, and authorized the Secretary of the Treasury to limit the coinage to such demand.

There being no demand at present for this coin for export, the discontinuance of its coinage is manifestly proper. Moreover, the coin, the trade-dollar, is not a legal tender, and, should the price of silver at any time recede, it may become quite troublesome to the holders.

Its coinage, under the present circumstances, gives depositors a profit which should be realized by the public Treasury, as representing the people of the United States, which is contrary to the spirit, if not the letter, of the law and sound public policy.

The bullion or gold value of 420 grains of standard silver, which is the weight of the trade-dollar, is at present say, $94\frac{1}{2}$ cents. Add $1\frac{1}{4}$ cents coinage charge, and we have, as the cost of a trade-dollar to the depositor, $95\frac{3}{4}$ cents.

In exchanging a trade-dollar for a dollar in United States currency, the gold value of which is $97\frac{33}{100}$ cents, depositors realize a gain of something over $1\frac{1}{2}$ per cent.

Should Congress hereafter authorize the coinage of a silver dollar *for circulation*, the government will no doubt promptly furnish all that may be required.

Very respectfully,

H. R. LINDERMAN,
Director.

Messrs. SAILOR & STEVENSON,
46 *South Third Street, Philadelphia.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 19, 1877.

We discontinue coinage of trade-dollars at all points until export demand shall again arise for the same. Other point under consideration.

H. R. LINDERMAN,
Director.

F. F. LOW, *San Francisco.*

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 19, 1877.

SIR: Instructions have been this day given to discontinue, for the present, the receipt of deposits of silver bullion at the San Francisco and Carson mints for trade-dollars.

Very respectfully,

H. R. LINDERMAN,
Director.

PARKER HANDY, Esq.,
24 *Nassau Street, New York.*

This note is sent in compliance with your verbal request made during your recent visit to this city.

H. R. L.

BANKING-HOUSE OF PARKER HANDY,
24 *Nassau Street, New York, October* 22, 1877.

DEAR SIR: Silver is again up to-day $55\frac{1}{8}@_{16}^{3}$ London, and we have paid $120\frac{1}{4}$ for 999 fine.

Should silver advance to $120\frac{3}{4}$ here, would you be disposed to accept 100 M ounces, now in, for trade-dollars at the mint and assay office, and thus get rid of the coinage of 125 to 150 M trade-dollars?

Very respectfully,

PKR. HANDY.
W. I. CRONISE.

DR. H. R. LINDERMAN,
Director, &c., Washington, D. C.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 23, 1877.

SIR: In reply to your letter of yesterday, I have to say, that it is not probable that we should desire to purchase any silver, heretofore deposited at the mint, for trade-dollars.

I may add that we expect to be able to settle all deposits for trade-dollars in the course of twelve days.

Respectfully,

H. R. LINDERMAN,
Director.

PARKER HANDY, Esq.,
23 *Nassau Street, New York City.*

[Telegram.]

NEW YORK, *October* 24.

DR. H. R. LINDERMAN,
Director United States Mint, Washington D. C.:

Could you arrange in any way a telegraphic transfer of one hundred thousand trades to San Francisco?

P. HANDY.

[Telegram.]

OCTOBER 24, 1877.

PARKER HANDY,
24 Nassau Street, New York City:
It cannot be done.

H. R. LINDERMAN,
Director.

OFFICE OF THE SUPERINTENDENT OF UNITED STATES ASSAY OFFICE,
New York City, October 24, 1877.

SIR: The deposits of silver at this office for trade-dollars, since the instructions "not to forward any more to the mint for coinage" were received here, amount to 65,000 pieces. Can you give us any indication when such bullion will go forward?

Very respectfully,

THOS. C. ACTON,
Superintendent.

Hon. H. R. LINDERMAN,
Director of the Mint, Washington, D. C.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
October 26, 1877.

SIR: In reply to your letter of the 24th instant, you are respectfully informed that no further shipments of silver bullion to the mint for trade-dollars can be made by you until an appropriation for freight on bullion and coin shall have been made by Congress, and that we can give you no indication as to the time such appropriation will be made.

Very respectfully,

H. R. LINDERMAN,
Director.

T. C. ACTON, Esq.,
Superintendent United States Assay Office, New York.

OCTOBER 27, 1877.

SUPERINTENDENT MINT, *San Francisco:*

Please furnish statement showing exports of silver to Oriental markets from your port during the present calendar year to close of this month, itemizing under heads of trade-dollars, Mexican dollars, fine bars.

H. R. LINDERMAN,
Director.

[Telegram.]

SAN FRANCISCO, CAL., *October* 30, 1877.

H. R. LINDERMAN,
Director Mint, Washington, D. C.:

Cannot buy silver in this market below equivalent of London rate. Bank of California offers to contract this month's receipts at one twenty and one-half. Holders of doré anxious to deposit for trade-dollars.

O. H. LA GRANGE,
Superintendent.

Answer.

OFFICE DIRECTOR OF THE MINT,
October 31, 1877.

SUPERINTENDENT MINT, *San Francisco:*

Cannot alter rule of purchase. Secretary, who is absent, will be consulted.

H. R. LINDERMAN,
Director.

[Telegram.]

SAN FRANCISCO, *November* 1, 1877.

Dr. H. R. LINDERMAN,
Director of Mint, Washington:

Recent instructions forcing all hawk into George for Hammer for China. Trade Jamaica, unless determined to give Giles entire control of bullion business. Garnish should be opened for deposits for hawk.

HARRIS.

[Translation—cipher telegram.]

SAN FRANCISCO, CAL., *October* 18, 1877.

Dr. H. R. LINDERMAN,
Director of Mint, Washington:

Recent instructions forcing all doré silver bullion into Pacific refinery for fine silver bars for China. Trade-dollars wanted, unless determined to give Nevada Bank entire control of bullion business. San Francisco mint should be opened for deposits for trade-dollars.

F. F. LOW.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 2, 1877.

F. F. LOW,
Anglo-California Bank:

The fact that nearly two millions of trades recently accumulated in your city proved that there was little demand for export. Has this condition changed? We cannot coin trades for any other purpose, nor can we pay for silver above market rate. The mint is open for deposits of silver for bars. We desire to accommodate the public, but must keep within the plain provisions of law.

H. R. LINDERMAN,
Director.

[The Anglo-Californian Bank, limited.]

SAN FRANCISCO, *November* 2, 1877.

DEAR SIR: I am in receipt of your telegram of to-day in answer to mine of yesterday, from which it appears you misapprehend the situation here in regard to trade-dollars. You say that "nearly two million trade-dollars accumulated here," &c. In this you include 1¼ millions now in the bullion-fund of mint, which, with the mint closed to deposits for trades, might just as well be in the moon, when computing the stock on hand here as in the mint.

The facts are, that not exceeding 500,000 are held here outside of the mint, and practically all this stock is held by the Nevada Bank, who, in consequence of your order closing mint to deposits for trades, advanced the rate from 96 cents to 98 cents par, at which price few have been sold.

The demand by local merchants for remittance has been, and will be until Chinese New Year, more than usual; and this demand is met for this steamer largely by Mexican dollars and fine silver, the former selling at 2 per cent. above the London rate, in the absence of trades, which could be bought at a fair market rate.

From this you will observe that your order is forcing the Chinese merchants to remit Mexican dollars when they would prefer to use dollars of our own coinage, made of silver produced in our own country. I can readily understand the reason for closing the Philadelphia mint to the coinage of trade-dollars, for these tokens are going into circulation in competition with the subsidiary silver. In point of fact there never was any reason for the coinage of trades at Philadelphia, as there never was, and cannot, under ordinary circumstances, be any demand for trades for export at New York. But here the case is different. Trades do not go into circulation here, nor can any amount be shipped to the Eastern States, to be put into circulation there at a profit, so long as silver commands 54*d.* per ounce in London. Hence, the deposits of silver for trades at this mint cannot exceed the quantity wanted for export. You ask why silver does not go into the mint for fine bars. The reason is that the private refineries charge a shade less for making bars, and make returns quicker, for they have a stock of fine silver on hand constantly, and in order to secure the manipulation of doré bullion, they will usually exchange and give the depositor the approximate value of the deposit in fine silver immediately.

You appear to think that your offer of 1 cent per ounce below the London price is a fair rate for silver for purchase. In reply I would say that doré bullion containing 5 points or less of gold can be shipped to London at a profit of $\frac{3}{8}d.$ (or $\frac{3}{4}$ per cent.) over and above your offer.

It can be put into fine bars, and the latter shipped to China, and the transaction would realize about the equivalent of the London rate. Fine silver in Hong-Kong to-day will realize about 57*d.* per ounce London standard, and this, allowing for difference in exchange, and deducting freight and expenses, would make the silver net the shipper here about $54\frac{7}{8}d.$ to 55*d.*

From this statement, you will readily perceive that it will be impossible for you to make purchases here at your offer.

Trusting that these explanations may be of service in enabling you to get a clear idea of the situation,

I am, dear sir, yours, very truly,

F. F. LOW, *Manager.*

H. R. LINDERMAN, Esq.,
Director of the Mint, Washington.

NOVEMBER 2, 1877.

SUPERINTENDENT MINT, *San Francisco:*

What is the extent of demand for silver for China, and what is the market rate for fine silver?

H. R. LINDERMAN,
Director.

[Telegram.]

SAN FRANCISCO, *November* 2, 1877.

DIRECTOR MINT, *Washington, D. C.:*

Nevada Bank not selling silver. Will consider any offer. Fine silver in Hong-Kong ten and one-fourth premium. Shipments there for purchase of London bills not over fifty-five pence. Silver required to pay for rice shipped to India. Depositors clamorous for trade-dollars to make settlement before Chinese New Year. Probably some contracts for payment in this coin. Five hundred thousand ounces could be received this month. None could go to interior without loss. Why not meet demand? While open can make short settlement.

O. H. LA GRANGE,
Superintendent.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 3, 1877.

SUPERINTENDENT MINT, *San Francisco:*

Please state amount of trades exported from your port months of July, August, September, respectively, and for October before and since receipt of order intermitting coinage.

H. R. LINDERMAN,
Director.

[Telegram.]

SAN FRANCISCO, *November* 3, 1877.

DIRECTOR MINT, *Washington, D. C.:*

Exports trade-dollars—July, nine hundred and thirty-three thousand six hundred and ninety-two; August, four hundred and one thousand one hundred and seventy-six; September, six hundred and nine thousand seven hundred and sixty-eight; October first to nineteenth, one hundred and ninety-four thousand one hundred and seven; October nineteenth to thirty-first, one hundred and eighty-seven thousand five hundred and fifty-one dollars.

O. H. LA GRANGE,
Superintendent.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 3, 1877.

SUPERINTENDENT ASSAY OFFICE, *New York City:*

State amount of trade dollars exported from port of New York since July last inclusive.

H. R. LINDERMAN,
Director.

CFFICE OF SUPERINTENDENT OF UNITED STATES ASSAY OFFICE,
New York City, November 3, 1877.

SIR: In reply to your telegram of this date, J. & W. Seligman & Co. shipped 385,000; Heidelbach, Ickelheimer & Co. shipped 175,000; Parker Handy shipped 250,000; in all, 810,000 trade-dollars exported from New York since July 1, 1877.

Very respectfully,

J. M. FLOYD,
Acting Superintendent.

Hon. H. R. LINDERMAN,
Director of the Mint, Washington, D. C.

[Telegram.]

SAN FRANCISCO, *November* 4, 1877.

H. R. LINDERMAN,
Director of the Mint, Washington:

Trades in mint cannot be considered when estimating amount in market; all others held by Nevada Bank, and do not exceed four hundred thousand, for which par is asked. Demand for export for local remittance will be large until Chinese New Year. Mexican dollars sold at 2 per cent. above London price for steamer yesterday. Mexicans thus forced on China market instead of trades; preference given refinery for bars because of difference in charge and quicker returns; fine silver for China yields better than your offer. Mint almost idle; force should be reduced unless you give it work by purchase of silver or coinage of trades.

F. F. LOW.

[Telegram.]

SAN FRANCISCO, *November* 5, 1877.

Hon. H. R. LINDERMAN,
Director Mint, Washington, D. C.:

It would greatly accommodate the public if the mint could receive deposits for trades to supply demand for Chinese New-Year settlements. Two or three next steamers most important.

THOS. BROWN,
Cashier.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
Washington, D. C., November 5, 1877.

SIR: It appears that since your order of 19th ultimo, temporarily suspending the receipt of deposits of silver at the mints for coinage into trade-dollars, an export demand for that coin in excess of the available stock in private hands has arisen at San Francisco.

In view of this demand, as well as to convert the trade dollars now in the bullion-fund of the mint into silver for the fractional coinage, I respectfully recommend that you so far modify your recent order as to authorize deposits of silver bullion to be received at the mint in San Francisco for returns in trade-dollars, pursuant to law and regulations.

Very respectfully, your obedient servant,

H. R. LINDERMAN,
Director.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

Approved.

JOHN SHERMAN,
Secretary of the Treasury.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 5, 1877.

SUPERINTENDENT MINT, *San Francisco:*

The Secretary has modified his recent order so far as to authorize the receipt, on and after to-morrow, of deposits of silver at your mint for returns in trade-dollars. You will so arrange the coinage as to reduce the amount of trades in your bullion-fund to a half million of dollars, and convert the resulting silver into fractional silver coins.

H. R. LINDERMAN,
Director.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 5, 1877.

SUPERINTENDENT MINT, *San Francisco:*

Deposits must be received only during regular business hours, and those made to-morrow for trade-dollars will, after melt and assay, all be paid pro rata on one day.

H. R. LINDERMAN,
Director.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
November 5, 1877.

SUPERINTENDENT MINT, *Carson:*

You are authorized to receive deposits of silver for returns in trade-dollars equal to the amount of that coin now in the bullion-fund of your mint.

H. R. LINDERMAN,
Director.

Approved.

JOHN SHERMAN,
Secretary of the Treasury.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 81.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of April 29, 1878, information in relation to the amount of money expended by the United States in the improvement of the Fox and Wisconsin Rivers.

MAY 17, 1878.—Referred to the Committee on Commerce and ordered to be printed

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WAR DEPARTMENT,
Washington City, May 16, 1878.

The Secretary of War has the honor to transmit to the United States Senate a letter, of the 14th instant, from the Chief of Engineers, with copy of a report from Maj. D. C. Houston, Corps of Engineers, in reply to Senate resolution of April 29, 1878, calling for information as to the money expended by the United States for the improvement of the Fox and Wisconsin Rivers, and intersecting canal or canals, and as to cost of completing said improvements, the benefit derived or to be derived therefrom, and other matters connected with this work.

GEO. W. McCRARY,
Secretary of War.

To the PRESIDENT *of the United States Senate.*

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 14, 1878.

SIR: I beg leave to return herewith the resolution of the Senate of the United States of April 29, 1878, which was referred to this office on the 1st instant—

That the Secretary of War be, and he is hereby, directed to report to the Senate what amounts of money have been expended by the Government of the United States for improvements of the Fox and Wisconsin Rivers, and intersecting canal or canals, in the State of Wisconsin. Also, how much it will cost to complete the said improvements so as to make the same navigable and useful, and what public benefit has been or is likely to be derived from such improvements and expenditure. Also, how much money has been expended for procuring the right of way; flowage or damage to private property; and how much money has been expended for attorneys' fees in settling rights of way; the names of the attorneys; and the names and salaries of all men employed as superintendents upon the said improvements--

and in reply thereto, to submit the accompanying copy of a report from Maj. D. C. Houston, Corps of Engineers, to whom it was referred,

which it is believed will afford the information called for by the resolution.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War.

IMPROVEMENT OF FOX AND WISCONSIN RIVERS.

UNITED STATES ENGINEER OFFICE,
Milwaukee, Wis., May 9, 1878.

GENERAL: I have the honor to submit the following report upon resolution of the Senate of the United States dated April 29, 1878, called for by your letter of the 3d instant.

The total amount of money expended by the government for the improvement of the Fox and Wisconsin Rivers and intersecting canal or canals, in the State of Wisconsin, is as follows, up to date of April 30, 1878:

There have been appropriated for these works by acts of Congress approved—

March 2, 1867.	Building and operating one dredge or snag boat on the Wisconsin River	$40,000 00
July 10, 1870.	Improving Wisconsin River	100,000 00
June 10, 1872.	Purchase of property and franchises of Green Bay and Mississippi Canal Company	145,000 00
March 3, 1873.	Improving Fox and Wisconsin Rivers	300,000 00
June 23, 1874.	Improving Fox and Wisconsin Rivers	300,000 00
March 3, 1875.	Improving Fox and Wisconsin Rivers	500,000 00
August 14, 1876.	Improving Fox and Wisconsin Rivers	270,000 00
	Total appropriated	1,655,000 00
April 30, 1878.	Balance available	53,271 98
	Total expenditures, including purchase from Green Bay and Mississippi Canal Company	1,601,728 02

Amount required to complete the work, as per my estimate of January 6, 1875, made in pursuance of the river and harbor act, approved June 23, 1874, calling for surveys and estimates for the improvements recommended by the Senate Committee on Transportation-Routes (see Annual Report of Chief of Engineers for 1875, Part II, page 521); my estimate for completion at that date was	$3,599,105 00	
There has since been appropriated	770,000 00	
Balance		2,829,105 00
To this should be added an estimate for a new canal at the outlet of Lake Winnebago, made in 1876. (See Report of Chief of Engineers for 1876, Part II, page 398.) The object of this canal was to relieve the government of liability for damages by flowage caused by dams at outlet of lake	146,558 00	
Amount required for completion		2,975,663 00

This estimate contemplates the rebuilding of all the old locks and dams; some of which will last for several years.

It is believed that this estimate will secure the completion of the improvements, so as to make them navigable and useful.

The public benefit that has been, or is likely to be, derived from said

improvements is fully set forth in the full reports of Maj. G. K. Warren, Corps of Engineers, under whose direction the original surveys upon which the appropriations have been based were made.

The principal of these reports are published in the Annual Report of the Chief of Engineers for 1868, page 357, under the title "A presentation of the public importance of these river improvements," and in his final report on the Fox and Wisconsin Rivers, Senate Ex. Doc. No. 28, Forty-fourth Congress, first session. In this report he says, in his introductory letter:

> I have in this report said nothing of the importance of the route as a line of water transportation. Its importance is here taken as fully established. This matter was treated by me in the Annual Report of the Chief of Engineers for 1868, pages 357–359.

The subject is also fully discussed in the report of the Select Committee of the Senate on Transportation Routes to the Seaboard—Report 307, Part I, Forty-third Congress, first session, pages 222, 224, and appendix, same volume, pages 114–136.

These documents give full information on this point, and I cannot do better than refer to them for details. I will, however, make a brief statement of the history and object of the work.

By acts of Congress approved August 8, 1846, March 2, 1849, August 3, 1854, and March 3, 1855, grants of land were made by the United States to the State of Wisconsin, "to aid in the improvement of the Fox and Wisconsin Rivers, and to connect same by a canal." The State commenced the work of improvement in 1848, and it was carried on by the State at first and subsequently by private companies under State authority until 1873, when the United States purchased the property of the Green Bay and Mississippi Canal Company, connected with the improvement of navigation.

This property consisted of the works for the improvement of the Fox River from Portage City to Green Bay, a distance of 160 miles, as follows: 22 locks, 11 dams, $7\frac{1}{2}$ miles of canal, including the $2\frac{1}{4}$ miles of canal connecting the two rivers at Portage.

There were 18 locks on the Lower Fox, from Lake Winnebago to Green Bay, overcoming a total lift of 170 feet in a distance of 35 miles. Over this portion of the river, navigation for steamboats had been created where, owing to the rapids, none had before existed.

It is difficult to specify the public benefit which has been derived from this portion of the work, but that it has been of very great benefit in developing the resources of Northern Wisconsin there can be no question.

The works on the Upper Fox have also done their share.

For many years, boats have passed through the canal connecting the Fox and Wisconsin Rivers, and the route has been used to a very considerable extent in passing boats through from Green Bay and points on the Fox River to the Mississippi River. That the improvement has been of great local benefit, is certain. The main object of the work, however, as far as the general government is concerned, is to provide reliable water-transportation between the Mississippi and the Lakes, by which the transportation of bulky products can be cheapened. The main articles are, going east, grain; going west, lumber and iron.

The full benefits of the route can only be known when the improvements are so far completed as to admit of thorough navigation at all stages of water. The works constructed by the State and the companies chartered by the State were, to a large extent, of a temporary character. When the government took possession they were in bad condition, as very little work had been done for several years, during which

negotiations for the transfer of the work to the government had been pending.

The immediate replacing of several locks and dams was necessary, and extensive repairs to all the works, also the construction of five new locks on the Upper Fox, to complete the system of slack-water navigation. All of the work done by the United States has been with a view to permanency.

The amount of money expended for procuring rights of way, flowage, or damage to private property, attorneys' fees in settling rights of way &c., is as follows:

For purchase of lock sites near Eureka, Berlin, White River, Princeton, and Grand River, 198 acres	$4,431 20
Pay of commissioners condemning lock sites, appointed by judge of circuit courts of the State of Wisconsin, at $10 per day	380 00
Actual expenses incurred by attorneys for traveling expenses, witness fees, postage, telegrams, court fees, printing, procuring abstracts of title, and stenographic copies of evidence, fees of clerks of courts	2,451 58
Surveys necessary in connection with claims for flowage, as called for by attorneys	4,823 73
Expenses of commission condemning lock site at Portage City not yet purchased by United States	872 95
Total	12,959 46

There have been no moneys paid for flowage or damage to private property up to this time. The only attorneys' fees paid out of the appropriation for the work is one item paid December 23, 1874, to Levi Hubbell, United States district attorney for eastern district of Wisconsin, for examination of title to lock site near Eureka, $30.

NAMES OF ATTORNEYS EMPLOYED.

Hon. C. R. Gill, special assistant attorney-general, from May, 1875, to May, 1876.

Hon. R. L. D. Potter, special assistant attorney-general, since May, 1876.

Salaries paid by Department of Justice.

NAMES AND SALARIES OF ALL MEN EMPLOYED AS SUPERINTENDENTS ON IMPROVEMENT OF FOX AND WISCONSIN RIVERS.

There are none employed under that designation, but as assistant engineers and overseers there are employed on the work the following persons:

John Pierpoint, assistant engineer, $175 per month.
C. A. Fuller, assistant engineer, $175 per month.
Samuel Whitney, overseer, $5 per day.
E. A. Hinman, overseer, $5 per day.
J. W. Allen, jr., overseer, $4 per day.

I am, general, very respectfully, your obedient servant,

D. C. HOUSTON,
Major of Engineers.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 82.

LETTER

FROM

THE SECRETARY OF THE NAVY,

COMMUNICATING,

In answer to a Senate resolution of April 16, 1878, the proceedings of the several boards of medical officers in the case of Capt. William N. Jeffers.

MAY 21, 1878.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, May 20, 1878.

SIR: I have the honor to send to the Senate copies of the records showing the proceedings of the several boards of medical officers in the case of Capt. William N. Jeffers, in obedience to the resolution of the Senate passed April 16, 1878. And in explanation thereof it is proper for me to make the statement which follows:

The proceedings of the first board, dated January 17, 1878, were so irregular as not to furnish any ground for approval or disapproval. They were, however, referred to the solicitor of the department, and his opinion is attached, to the effect that they are "irregular and void." And they were so treated.

A second board was appointed, consisting of five medical officers. The solicitor also found this second "defective in both form and substance," and recommended its disapproval. Like the first, it did not show such an examination as could become the basis of executive action. Besides this, the board was divided, two members of it dissenting from the conclusion of the majority for the reasons stated by them. It was also disapproved.

A third board was appointed, consisting of one medical director and two surgeons. This board decided that Captain Jeffers was physically qualified to perform all his duties at sea, and recommended him for promotion. (See record attached to record of naval examining board.) This record was found by the solicitor to be correct in form and substance, and in his opinion the evidence sustained the finding. It was accordingly approved.

Subsequently, Captain Jeffers was examined by a naval examining board for promotion, and found qualified. These proceedings were also approved, and he was nominated to the Senate accordingly.

The record of the board in the case of Capt. Somerville Nicholson will be transmitted to the Senate as soon as it can be copied.

I have the honor to be, sir, very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States.

FIRST BOARD.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, D. C., January 17, 1878.

SIR: We have examined Capt. William N. Jeffers, United States Navy, and find him not physically qualified to perform all his duties at sea.

Attached hereto are the order convening the board, marked A; the order for examination, marked B; and the candidate's statement, marked C.

Respectfully,

P. LANSDALE,
Medical Director, U. S. N.
RICHARD C. DEAN,
Medical Inspector, U. S. N.
B. F. GIBBS,
Medical Inspector, U. S. N.

Hon. R. W. THOMPSON,
Secretary of the Navy, Washington, D. C.

A.

NAVY DEPARTMENT,
Washington, October 15, 1877.

SIR: A board of medical examiners to determine the physical qualifications of such officers as may, by the Secretary of the Navy, be notified to appear before it, as candidates for promotion, is hereby ordered to convene at this department on Monday the 15th day of October, instant, at noon.

The board will consist of yourself, as senior member and president, and of Medical Inspectors R. C. Dean and B. F. Gibbs, as members.

The result of the examination in each case will be reported separately to the Secretary of the Navy.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Medical Director PHILIP LANSDALE,
United States Navy, Washington, D. C.

A true copy.

B. F. GIBBS,
Medical Inspector.

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, January 15, 1878.

SIR: The board of medical examiners of which you are president will take up the case of Capt. William N. Jeffers, as to his physical qualifications to perform all his duties at sea.

By direction of the Secretary.

Respectfully,

DAN L AMMEN,
Chief of Bureau

Medical Director P. LANSDALE,
U. S. Navy, Navy Department.

C.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, D. C., January 15, 1878.

I certify on honor that I am, to the best of my knowledge and belief, free from bodily ailments; that I am physically qualified to perform all the duties of a naval officer at sea.

WILLIAM N. JEFFERS,
Captain U. S. Navy.

NAVAL SOLICITOR'S OFFICE, *January* 19, 1878.

If this document is intended as a report of the proceedings of a medical board of examination for promotion, the naval solicitor respectfully advises that it be disapproved and set aside as irregular and void, for the following reasons:

It is not and does not purport to be the record of a board; no board meeting is alleged; no time, or place, or mode of examination is set forth; it is signed by three medical officers, who do not describe themselves as president or members, or as acting in that capacity; it shows no board organization or action; no order, or copy of order, convening a board composed of three medical officers who signed this document is attached thereto; but a paper is so attached, which is an interpolated and incorrect copy of an order of the department, dated October 15, 1877, addressed to three medical inspectors, and which has been altered from the original by striking out the name of the senior member and president, and interpolating the name of a medical director, who, as is shown by the records of this department, was not ordered to that board until November 22, 1877.

The order of October 15, 1877, authorized the board to examine only "such officers as may, by the Secretary of the Navy, be notified to appear before it as candidates for promotion." But Captain Jeffers was not so notified, and could not, therefore, lawfully be examined, and was not lawfully examined.

This irregular document states that there is attached thereto "the order for examination, marked B"; but that is not the above-named and indispensable notification to the candidate, nor can it lawfully be used and taken instead thereof.

No evidence is reported in this case, except the statement of Captain Jeffers, which affirms that he is physically qualified to perform all his duties at sea, a statement wholly at variance with the finding in this irregular communication.

The solicitor further respectfully advises that the medical examining board convened by the department order of October 15, 1877, be dissolved, and that a new board be convened by an order and under regulations such as are set forth in the solicitor's draft herewith submitted.

JOHN A. BOLLES,
Naval Solicitor.

SECOND BOARD.

Record of proceedings of the board of medical examiners, convened at the Navy Department, Washington, D. C., in case of Capt. William. N. Jeffers, U. S. N., January 29 *and* 30, *and February* 4 *and* 5, 1878.

NAVAL SOLICITOR'S OFFICE,
February 27, 1878.

This record is defective in both form and substance, and I respecfully advise that it be disapproved.

It does not appear what, if any, examination was made by the board or any of its members, and the finding is at variance with all the reported evidence.

JOHN A. BOLLES,
Naval Solicitor.

EXECUTIVE MANSION,
February 28, 1878.

The finding in this report is disapproved.

R. B. HAYES.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, January 29, 1878.

The board met this day at 12 o'clock, noon, pursuant to the adjournment of yesterday.

Present: Medical Director P. Lansdale, president; Medical Director F. M. Gunnell, Medical Inspector A. L. Gihon, Medical Inspector R. C. Dean, Medical Inspector B. F. Gibbs, members; James C. Dulin, esq., recorder.

Capt. William N. Jeffers, U. S. N., appeared as a candidate for promotion in obedience to an order, a copy of which is appended hereto and marked A, and the board proceeded to take up the physical examination in the case.

The order of the Secretary of the Navy convening the board was then read aloud by the recorder, and a copy of said order is appended hereto and marked B.

The president of the board then swore the recorder to the faithful performance of his duty as recorder.

The recorder then swore the president and members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

The department's order, directing the board to take up the case of Capt. William. N. Jeffers, U. S. N., as to his physical qualifications to perform all his duties at sea, was then read aloud by the recorder, and said order is appended to this record and marked C.

The candidate's statement as to his physical condition, duly sworn to by him, is also appended hereto and marked D, together with other documentary testimony.

The board then proceeded with the physical examination in the case and, after concluding it, considered the documentary testimony herein stated.

The board, at the request of Captain Jeffers, directed that the statements contained in the letter of Surgeon J. H. Tinkham, U. S. N., be sworn to, so as to be admitted as evidence in the case.

The president of the board addressed a letter to the Secretary of the Navy requesting "that the duties of a commodore may be fully defined in the capacities referred to in section 1529, title 15, chapter 2, of the Revised Statutes, and in paragraph 4, chapter 11, Navy Regulations, and also in connection with naval forces operating on shore." A copy of said letter is annexed and marked E.

The board then adjourned to meet at 12 o'clock, noon, to-morrow the 30th instant.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, January 30, 1878.

The board met pursuant to adjournment.

Present, the president and all the members and the recorder. The record of the proceedings of yesterday was read and approved.

The board then postponed the further consideration of the case of Captain Jeffers to wait for evidence which that officer desired to introduce.

FEBRUARY 4, 1878.

The board met pursuant to adjournment.

Present, the president and all the members of the board and the

recorder. Captain Jeffers being present, the board resumed consideration of his case.

A communication from the Secretary of the Navy, in answer to the letter of the president of the board, was received and read aloud by the recorder; and a certified copy of said letter is appended hereto and marked E No. 2.

A written statement, duly sworn to by Robert W. Allen, paymaster U. S. N., concerning the physical condition of Captain Jeffers during Paymaster Allen's service with him on board the Swatara, from February, 1867, to October, 1868, was read in evidence, and is hereto appended and marked F.

Commodore R. H. Wyman, U. S. N., was then called as a witness at the request of Captain Jeffers. Commodore Wyman being present, made answers to certain questions asked him by Captain Jeffers. Said questions and answers being in writing, were subscribed and sworn to by Commodore Wyman before the president of the board, and are annexed hereto and marked G.

Commander Edward P. Lull, U. S. N., was next called as a witness by Captain Jeffers. Commander Lull appeared and made answers to certain questions asked him by Captain Jeffers. Said questions and answers being in writing, were subscribed and sworn to by Commander Lull before the president of the board, and are annexed to this record and marked H.

An affidavit from Commander W. R. Bridgman, U. S. N., under date January 28, 1878, was received and read in evidence, and is appended hereto and marked I.

A letter from James H. Finkham, surgeon U. S. N., dated Owego, January 24, 1878, and duly sworn to by him, was received and read in evidence, and is appended to this record and marked J.

Rear-Admiral Daniel Ammen, U. S. N., was then called as a witness in the case by Captain Jeffers; and that officer appeared and made answer to certain questions asked him by Captain Jeffers. Said questions and answers being in writing, were subscribed and sworn to by Rear-Admiral Ammen before the president of the board, and are annexed hereto and marked K.

Surg. John C. Spear, U. S. N., was recalled at the request of Captain Jeffers, and that officer having appeared, made a further statement in answer to a question propounded by Captain Jeffers. Said question and answer being in writing, were subscribed and sworn to by Surgeon Spear before the president of the board, and are appended and marked L.

The board was then cleared, and, pending the consideration of the case, it adjourned to meet at 12 o'clock noon, to-morrow, the 5th instant.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, February 5, 1878.

The board met pursuant to adjournment.

Present, the president and members of the board and the recorder.

The record of the proceedings of yesterday was read and after correction approved.

The board then proceeded to deliberate upon the evidence in the case of Captain Jeffers, hereto annexed and marked as aforesaid, and also upon the personal examination of the candidate, and after mature de-

liberation decided that Capt. William N. Jeffers, U. S. N., is *not* physically qualified to perform all his duties at sea.

P. LANSDALE,
Medical Director and President.

JAMES C. DULIN,
Recorder.

A.

NAVY DEPARTMENT,
Washington, January 28, 1878.

SIR: You will present yourself to Medical Director P. Lansdale for examination as to your physical qualifications to perform all your duties at sea, required by section 1493 of the Revised Statutes, by a board of which he is president.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Capt. WM. N. JEFFERS, U. S. N.,
Navy Department.

A true copy.

JAMES C. DULIN,
Recorder.

B.

NAVY DEPARTMENT,
Washington, January 23, 1878.

A medical board to examine and report upon the physical qualifications of such line-officers of the Navy as may, by the Secretary of the Navy, be ordered to appear before it as candidates for promotion, is hereby ordered to convene at this department on Thursday, the 24th day of January instant, at 12 o'clock noon, or as soon thereafter as may be practicable.

The record of its examination, proceedings, and findings, with the evidence taken, must, in each case, be reported to the Secretary of the Navy, duly signed by the president of the board, and by its recorder.

The board will consist of the following officers, viz:

Medical Director P. Lansdale, president; Medical Director F. M. Gunnell, medical inspectors A. L. Gihon, R. C. Dean, B. F. Gibbs, members. James C. Dulin will act as recorder of the board.

In each case the board will be organized anew, as follows:

The president will first swear the recorder to the faithful performance of his duty as recorder, and the recorder will then swear the president and other members of the board, faithfully and impartially to examine and report upon the case of the candidate about to be examined.

A copy of this order and of every order, or notice addressed by the department to the board, or any member thereof, to the recorder, or candidate for promotion, and of every record or writing used as evidence in the case, certified by the recorder, must be attached to the record of proceedings in that case.

The physical qualifications of the candidate at the date of the examination and at no other time will be examined or reported.

The duties to which those qualifications relate are the duties of the grade to which the candidate seeks promotion, and not those of any other grade.

R. W. THOMPSON,
Secretary of the Navy.

A true copy.

JAMES C. DULIN,
Recorder.

C.

NAVY DEPARTMENT,
Washington, January 28, 1878.

SIR: The Board of Medical Examiners, of which you are president, will take up the case of Capt. W. N. Jeffers as to his physical qualifications to perform all his duties at sea.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Medical Director PHILIP LANSDALE, U. S. N.,
Navy Department.

D.

BOARD OF MEDICAL EXAMINERS,
Washington, January 29, 1878.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all my duties at sea, in the grade to which I am a candidate for promotion; and that I am at present free from all bodily ailments.

WILLIAM N. JEFFERS,
Captain United States Navy.

Subscribed and sworn to before me this twenty-ninth day of January, A. D. 1878.

P. LANSDALE,
Medical Director U. S. N., and President of the Board.

Medical history of William N. Jeffers, U. S. N.

I have to submit the following statement relative to my medical history:

In January, 1859, having joined the U. S. sloop Brooklyn, at New York, I was seized with a violent attack of inflammatory rheumatism, for which was admitted to the New York Hospital.

By the medical record hereunto annexed, marked A, it appears I was afterwards on the sick-list two days in 1859, and two in 1860.

On the breaking out of the rebellion, I was ordered to the U. S. frigate Roanoke as navigator, and subsequently executive. Sick one day with laryngitis.

Transferred to the Underwriter as commander—I had no medical and no disease.

In March, 1862, to command the Monitor, during which time and until November, 1863, suffered more or less from the great exposure on board that vessel. Transferred to navy-yard, Philadelphia, as inspector of ordnance, and from there to the command of the ordnance yard, Washington, until July, 1865.

During this time suffered very much with rheumatic gout, owing to the great exposure and trying nature of my duties.

Examined and promoted from lieutenant commander to commander, March 3, 1865. July, 1865, ordered to command of U. S. S. Swatara, and cruised for four months in the West Indies, then to the Mediterranean and coast of Africa; returned December, 1868; at no time during this cruise was I incapacitated for the performance of my duties as commander of a ship, or failed in the official etiquette of visits, &c.; visited Jerusalem, the Pyramids, and other objects of interest—traveling to Geneva via Turin, and to Berlin and Dresden.

On my return I was ordered to the Naval Observatory, and owing to the exposure consequent on that duty, and what I am now satisfied were errors of diet and treatment, suffered at times severely.

Was ordered to the board of examiners of officers for promotion; began to mend.

July, 1870, promoted to captain. Ordered to duty in Bureau of Ordnance.

October, 1871, ordered to command the gunnery practice ship Constellation; cruised in the West Indies until 1872, when I took on board the naval cadets and cruised on the coast until October. Remained in command until April 10, 1873, when I became Chief of Bureau of Ordnance. At no time was I incapacitated for the command; in fact I refused to take a coast pilot, as was the practice of both my predecessor and successor, confident of my physical ability as well as of the knowledge necessary to navigate my own ship.

At no time was I unable to perform all my duties.

I therefore submit that the fact of having held two commands and satisfactorily performed the duties in very active cruising when my state of health was not so good as now, is the best evidence of my capacity for present command.

In April, 1874, I proceeded to Hartford to be present at a test of guns, and the weather proving very cold, raw, and unfavorable, and having taken an unusual (for me) amount of stimulants to counteract the effect of cold, I had a severe attack of rheumatic gout, since which time I have had no returns of the disease.

I submit that, as I have no disease of the heart, lungs, liver, stomach, or kidneys, have had no return of attack for three and a half years, and my general and specific health has vastly improved since my last command, I declare myself in every respect competent to command a vessel of war under any circumstances. That I have a certain stiffness of the knees is evident, but this is largely due to the sedentary nature of my duties as Chief of the Bureau, and is removed by exercise.

I certify on honor that the above record is correct, and that I have no physical disability

which has hitherto, or would now, hinder me from performing all the duties of a captain or commodore at sea.

WILLIAM N. JEFFERS,
Captain, U. S. Navy.

To Medical Director PHILIP LANSDALE,
President of Board of Medical Examiners.

Subscribed and sworn to before me this 29th day of January, A. D. 1878.

P. LANSDALE,
Medical Director and President of Board.

Vessels of the U. S. N. Navy in which Capt. William N. Jeffers has served, from his original entry into the service, September, 1840, to April, 1873, his last cruise.

Name of vessel.	Propulsion.	Guns.	Rank.	Duties.	Station.
North Carolina	Sails	74	Midshipman	Watch	Home.
Washington, brig	Sails	4	....do	....do	Do.
United States	Sails	44	....do	....do	Pacific.
Congress	Sails	44	....do	....do	Brazil.
Vixen	S. W	3	Passed Mid	....do	Gulf.
Fredonia, store-ship	Sails	4	....do	....do	Do.
Morris, Coast Survey schooner	Sails	....	....do	Executive	Do.
Falcon, mail steamer	S. W	....	....do	Ex. and Capt	Home.
Illinois, mail steamer	S. W	....	....do	....do	Do.
Princeton	Screw	10	Act'g Master	Nav. and Watch	Do.
Macedonian	Sails	22	....do	....do	Do.
Alleghany	Screw	10	Master	....do	Do.
Germantown	Sails	20	....do	Watch	Brazil.
Water Witch	S. W	3	Lieutenant	Ex. and Capt	Do.
Plymouth	Sails	9	....do	Nav. and Ex	Gulf.
Brooklyn	Screw	22	....do	Watch	Do.
Saratoga	Sails	20	....do	....do	Do.
Philadelphia	S. W	2	....do	Captain	Home.
Roanoke	Screw	44	....do	Nav. and Ex	Do.
Underwriter	S. W	3	....do	Captain	Do.
Monitor	Iron-clad	2	....do	....do	Do.
Swatara	Screw	10	Commander	....do	Med. & African.
Constellation	Sails	10	Captain	....do	Home.

NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,
January 24, 1878.

U. S. S. Brooklyn.—William N. Jeffers, lieutenant, admitted October 2, 1859, with rheumatism, and discharged to duty October 4, 1859.

Admitted November 13, 1860, with rheumatism, and discharged to duty November 16, 1860.

Roanoke.—Admitted July 21, 1860, with laryngitis, and discharged to duty July 22, 1861.

Name does not appear on the medical journals of the United States steamers Swatara and Constellation.

The above is a correct statement from the medical records of this bureau.

W. GRIER,
Surgeon-General, United States Navy.

WASHINGTON, *January* 28, 1878.

In connection with my record of service and medical history, I have to request that the board, if not satisfied by personal examination that I am physically qualified to perform all my duties at sea, will permit me to introduce witnesses, by whom I am prepared to prove that I have in my last commands performed all the duties of a commander, even when less qualified than at present.

WILLIAM N. JEFFERS,
Captain, United States Navy.

Medical-Director PHILIP LANSDALE,
President of Board of Medical Examiners.

WASHINGTON, D. C., *January* 26, 1878.

COMMODORE: I willingly comply with your verbal request of this afternoon to write you a letter, stating in detail your physical condition at the time we served together on the United States steamer Swatara.

I served aboard the Swatara under your command, as surgeon, from November, 1865, to October, 1868.

The ship cruised steadily in the West Indies, in Europe, and on the coast of Africa. *Your general health was very good always.* From time to time you suffered from mild attacks of rheumatic gout, which never failed to pass off in the course of two or three days. In consequence, your feet were tender and you were somwhat lame, but, notwithstanding, *you performed satisfactorily all your duties as commanding officer*, so far as I was able to judge. I never heard any complaint, or statements from any one that you did not do so. I do not recollect that you were ever obliged by reason of disability to delegate the duties of your office, or any of them, to any officer. You always inspected ship, and did it thoroughly. When approaching land, or when passing through intricate channels, or in fogs in the English Channel, I have repeatedly seen you stand on the bridge, or forecastle, or in the rigging for hours together, and have known you in gales of wind at sea to be on deck half the night at a time; you were quite able to leave or board ship in the roughest whether.

I have been at sea in the Navy with seventeen commanding officers, and, if I may be allowed to express an opinion in the matter, I would say that during this cruise you commanded the Swatara as well as any of the other ships in which I have served have been commanded.

As an instance of your physical endurance, I remember we rode on horseback one night from Joppa to Jerusalem, arriving in time for breakfast, and that the same afternoon you came to my room in the hotel and urged our starting at once for the River Jordan and the Dead Sea, which from sheer exhaustion I had to decline to do.

In the course of our three years' service together I am very certain that your disease (rheumatic gout) *did not make any progress*, and, on the contrary, at the end of that time I think you were less lame.

Very respectfully, your obedient servant,

JOHN C. SPEAR,
Surgeon, U. S. N.

Commodore WM. N. JEFFERS, U. S. N.,
Chief Bureau of Ordnance, Navy Department.

Subscribed and sworn to before me this 29th day of January, A. D. 1878.

P. LANSDALE,
Medical Director and President of Board.

JANUARY 29, 1878.

In reply to this question by the board of medical examiners, "What is your impression, without having made a special examination as to the candidate's general condition of health compared with that during the time when you served with him?" I have to state that my impression is that his general condition of health is quite as good now as it was then.

JOHN C. SPEAR,
Surgeon, U. S. N.

Subscribed and sworn to before me this 29th day of January, 1878.

P. LANSDALE,
Medical Director and President of Board.

E.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT,
Washington, January 29, 1868.

SIR: In order that the board may be provided with all necessary information to enable it to proceed as intelligently as possible with the case of Capt. William N. Jeffers, U. S. N., now under examination, I have to respectfully request that the duties of a commodore may be fully defined in the capacities referred to in section 1529, title 15, chapter 2 of the Revised Statutes, and in paragraph 4, chapter 2, Navy Regulations; and also in connection with naval forces operating on shore.

I am, sir, very respectfully,

P. LANSDALE,
Medical Director and President.

A true copy.

JAMES C. DULIN, *Recorder.*

Hon. R. W. THOMPSON,
Secretary of the Navy.

E No. 2.

NAVY DEPARTMENT,
Washington, January 30, 1878.

SIR: Your letter of the 29th instant is now before me, and in answer I will say that, as I understand them, the duties of a commodore do not presuppose that he will be called on to command a force on shore. The admiral commanding designates the most suitable officer for that purpose.

The only landings which took place in force during the late war were thus conducted, as I learn from those personally cognizant of the facts. At Pocataligo, Commander Preble commanded the force; at Fort Fisher, Commander Breese, and the naval drill at Key West, Captain Simpson. In each of these cases I am told there were many senior officers present.

Therefore, I am of the opinion that commodores are not, in the sense of the Navy Regulations, supposed to be required to command a landing force. Their other duties are prescribed by paragraphs 4 and 5 of chapter 2 of the Navy Regulations.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Medical Director PHILIP LANSDALE,
President Board of Medical Examiners, Navy Department.

A true copy.

JAMES C. DULIN, *Recorder.*

F.

Statement concerning the physical condition of Commodore W. N. Jeffers (the Commander Jeffers) during my service with him on the Swatara from February, 1867, *to October,* 1868.

1. The line officers on board the ship were one lieutenant-commander and five ensigns, (the latter having been promoted from midshipmen a few days before I joined the ship), the senior of whom was the navigating officer of the vessel.

(NOTE.—This fact is stated to show that the subordinate officers of the vessel were so young and inexperienced as to require unusual vigilance and attention to details on the part of the commanding officer.)

2. Commodore Jeffers was never, during my service with him, entirely free from lameness or stiffness; but I never knew this, or any sickness, to incapacitate him from the full and detailed performance of his duties as commanding officer. I never knew at sea the weather so severe or the motion of the vessel so great that he did not spend a proportion of his time on his feet on deck, sufficient to the proper management and safety of the vessel. We passed through at least the usual number of gales—one very severe one off Port Mahon, which lasted six continuous days. Not the slightest accident to officers, crew, or vessel happened during the whole cruise.

3. In port I never knew the sea so rough that he could not get in a boat as well as the average officers of the Navy. He never to my knowledge, and my opportunities of judging were good, neglected to return or pay an official a proper personal courtesy.

4. I never knew a commanding officer, whether at sea or in port, who left so little in the navigation and working of the vessel, and in the daily administration of affairs, to his subordinates. No subsequent law or regulation has made the executive officer less than he made him. He never failed to be on deck and take upon himself the supreme management of the vessel when nearing or entering a port, or when sailing or steaming along the shore, or under any circumstances when the navigation of the vessel was intricate or doubtful.

5. I had never occasion to see him, either on public duty or personal reasons, that I could not do it, and if there was an instance to the contrary, with regard to either officer or man, during the whole cruise, I never knew it.

6. I accompanied him with a party of officers on a trip to Jerusalem, on horseback—a distance of 45 miles, at night, over a very rough road—entailing loss of sleep, &c.; and at the termination of the journey he was the freshest and most enduring of the party.

ROBERT W. ALLEN,
Paymaster, U. S. Navy.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I hereby certify that on this 1st day of February, A. D. 1878, before me, a notary public for the Commonwealth of Pennsylvania, in and for the city and county of Philadelphia, personally appeared Robert W. Allen, paymaster in the United States Navy, who, being duly sworn, did depose and say that the statements made by him in the foregoing affidavit are correct and true, to the best of his knowledge and belief.

ROBERT W. ALLEN,
Paymaster U. S. Navy.

Sworn before me this 1st day of February, A. D. 1878.
[SEAL.]

E. J. SNYDER,
Notary Public.

G.

Questions for Commodore R. H. Wyman.

1. Name, rank, &c.?—Answer. Robert H. Wyman; commodore in the United States Navy.
2. During the time you served in the Mediterranean squadron in company with Commander Jeffers, did he, or did he not, perform all the duties of a commanding officer at sea?—Answer. To the best of my knowledge and recollection, he did.
3. As a professional question, from your association with him at that time and for the last four years, do you, or do you not, consider him equally competent to perform all the duties of a commodore at sea?—Answer. I do.

R. H. WYMAN,
Commodore, United States Navy.

Subscribed and sworn to before me this 4th day of February, A. D. 1878.

P. LANSDALE,
Medical Director, and President of Board.

H.

Questions for Commander Lull.

1. Name, rank, &c.?—Answer. Commander Edward P. Lull, United States Navy.
2. What position did you hold on United States steamer Swatara?—Answer. Was executive officer from about October 15, 1865, to May, 1866.
3. Did, or did not, Commander Jeffers perform all the duties of commanding officer during that cruise?—Answer. In every possible respect he performed the whole duties of commanding officers.
4. As a professional question, do you, or do you not, consider him as physically competent now to perform the duties of a commodore as he was at that time?—Answer. Quite as much so.
5. What is his general health and personal activity as compared with them at that time?—Answer. As far as I can judge, there is no especial difference.

EDWARD P. LULL,
Commander, United States Navy.

Subscribed and sworn to before me this 4th day of February, A. D. 1878.

_____,
Medical Director, and President of Board.

I.

OFFICE OF LIGHT-HOUSE INSPECTOR,
Tenth District, Buffalo, N. Y., January 28, 1878.

(*Affidavit.*)

I, William R. Bridgman, late executive officer of the United States ship Constellation, depose and say that Capt. William N. Jeffers, during the time he commanded that vessel, performed all the duties of commanding officer at sea, coming on deck on all necessary occasions, supervised the navigation, exercises, and drills, and in part made the necessary official visits; also that he was never off duty on account of disability, or to my recollection unable to come on deck save once for a brief period.

W. R. BRIDGMAN,
Commander, United States Navy.

STATE OF NEW YORK,
County of Erie, ss:

Subscribed and sworn before me this 28th day of January, 1878.
[SEAL.]

H. G. NOLTON,
Notary Public.

J.

OSWEGO, *January* 24, 1878.

DEAR SIR: I can, of course, bear witness that you were competent to do and did all your duties as commandant of the Constellation during the cruise when I was with you.

I remember that at sea you never went off duty on account of sickness, and indeed I think you were not on the sick-list during the cruise. I can also remember that in all the bad weather and all the hard work of that cruise you never gave out, and your endurance at such times was a frequent subject of remark among the officers of the Constellation.

I am on my back, a convalescent from a dangerous attack of pneumonia; the first serious sickness of my life. They say I can't hope to get out in less than four week. If I can travel, then I shall go to Washington for the benefit of a warmer climate, and if I do not find myself getting well there I shall go farther South. I hope, however, that a few weeks will make me as strong as ever.

Yours, very truly,

J. H. TINKHAM,
Surgeon, United States Navy.

Capt. WM. N. JEFFERS, U. S. N.,
Chief of Bureau of Ordnance.

STATE OF NEW YORK,
Tioga County, ss:

James H. Tinkham, surgeon, United States Navy, being duly sworn, deposes and says that the facts set forth in the foregoing letter are true; and I certify that I know the person so sworn to be the same person who wrote and subscribed the said letter.

J. J. VAN KLEECK,
Notary Public, Tioga County, New York.

K.

Questions for Rear-Admiral D. Ammen.

1. Name, rank, &c.—Answer. Daniel Ammen, rear-admiral United States Navy.

2. As a professional question, from your association with Captain Jeffers for the last four years, do you or do you not consider him physically qualified, especially in the point of personal activity, to perform all the duties of a commodore at sea?—Answer. I do, and taking his other qualities, in comparison with the commodores on the Navy list, I consider his duties would be exceptionally well performed.

DAN'L AMMEN,
Rear-Admiral United States Navy.

Subscribed and sworn to before me this 4th day of February, A. D. 1878.

P. LANSDALE,
Medical Director and President of Board.

L.

Surg. JOHN C. SPEAR, United States Navy, was recalled as a witness in the case.

Question. Having made a personal examination of Capt. William N. Jeffers, since the date of your former testimony, how does his present condition compare with that while he commanded the United States ship Swatara?—Answer. I have this day made a personal examination of Capt. William N. Jeffers, and find that the mobility of the knee and ankle-joints remains about the same. The feet are less tender and his gait is improved. I had occasion to-day to notice that he mounts stairs better than he did at that time. I also noticed that he dressed and undressed himself more rapidly and with greater ease than he did when we were on duty together. The mobility and general state of his hands remain the same, and his handwriting has not changed in the least. He is certainly much less gouty now.

This is plainly indicated to me by his general appearance and improved condition of health, and also by the fact that he has not had an attack of rheumatic gout or gout, so he tells me, for three years and a half; while on the Swatara he suffered from the mild attacks I have previously described as often as once a quarter, I should say.

JOHN C. SPEAR,
Surgeon United States Navy.

Subscribed and sworn to before me this 4th day of February, 1878.

P. LANSDALE,
Medical Director and President of Board.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT,
Washington, D. C., February 25, 1878.

SIR: The undersigned, members of the board of medical examiners, having under a misunderstanding of their rights and duties as members, dissenting from the finding of the majority of the board, neglected to record the fact of their dissent and their reasons therefor, and having since learned that it is their duty as well to themselves as to the candidate that this should be done, beg to be permitted to append to the record of said board their following several statements.

Very respectfully, your obedient servant,

F. M. GUNNELL,
Medical Director.
A. L. GIHON,
Medical Inspector.

Hon. R. W. THOMPSON,
Secretary of the Navy.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT,
Washington, D. C , February 25, 1878.

The undersigned, while finding Capt. William N. Jeffers, United States Navy, impeded in some of the articulations, by former attacks of rheumatic gout, interfering with the full performance of the functions of locomotion and prehension, is yet of the opinion that he is physically qualified to perform efficiently all his duties at sea in the grade to which he seeks promotion, to wit, that of commodore in the Navy, said opinion being based upon the following facts:

First. That while similarly but more acutely affected, he was found by boards of medical officers to be physically qualified to perform all the duties at sea of the junior and more active grades of commander and captain.

Second. That the medical officers with whom he served at sea in these grades, officers of the highest professional skill and integrity, testify on oath that he did efficiently perform all and every one of the duties of these grades.

Third. That one of these medical officers further testifies on oath that Captain Jeffers's physical condition at that time was decidedly no better, if as good as it is now.

Fourth. That the medical records of the Navy Department show that he has never been heretofore disabled for duty for any unusual period by reason of sickness.

Fifth. That I am convinced, from personal experience, as a sufferer from chronic rheumatism, entailing similar interference with the full performance of the functions of locomotion, for several years at a time, that it is possible for an officer of Captain Jeffers's known and unquestioned energy, zeal, and determination to do his whole duty, and to do it well, notwithstanding his physical infirmity, however painful, and I am further satisfied that he is capable of greater physical effort and endurance than many other officers now on the active list in junior grades.

Sixth. That it is my professional opinion that in recent years his condition has progressively improved, and that his greater improvement has only been retarded by the sedentary duties of his office as chief of bureau, which for the past five years have confined him to his desk, in a posture calculated to aggravate the impeded movements of the knee-joints.

Seventh. That, from my own knowledge of the duties which he not only will be, but may possibly be required to perform at sea, as a commodore in the Navy, I am unable to conceive of any duty which Capt. William N. Jeffers cannot efficiently and thoroughly perform.

A. L. GIHON,
Medical Inspector United States Navy and Member.

I have to dissent from the finding of the majority of the board in the case of Capt. William N. Jeffers, for the following reasons:

It is in evidence before us that Captain Jeffers has efficiently performed the active duties of commander and captain at sea since the attacks of gouty rheumatism which have diminished in some degree the flexibility of his limbs; that he has had no attack of rheumatism for nearly four years, and that, in the opinion of an experienced medical officer who has served with him and knew him well, he is in at least as good condition of health and strength as when he commanded the Swatara in 1866–'68.

I have no doubt that this is the case, and I believe that Captain Jeffers is physically qualified to perform all the duties, ashore and afloat, that have been or will be performed by a commodore in the Navy.

It does not appear that, in his service of 37 years in war and peace, he has ever failed to perform any duty required of him.

The well known ability and energy of Captain Jeffers would enable him, in my opinion, to overcome a degree of physical infirmity that might affect the efficiency of stronger persons, and considering the balance of the man, I should feel compelled to give the government the benefit of the doubt, if any rested in my mind, and hesitate to deprive the Navy of the valuable services of one of its most efficient and accomplished officers.

F. M. GUNNELL,
Medical Director.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT.
Washington, February 25, 1878.

SIR: I have the honor to transmit herewith a communication from Medical Director F. M. Gunnell, and Medical Inspector A. L. Gihon, members of this board, together with two certain paper writings on the subject of the physical condition of Capt. William N. Jeffers, United States Navy.

I am, sir, very respectfully,

P. LANSDALE,
Medical Director and President.

Hon. R. W. THOMPSON,
Secretary of the Navy, Navy Department.

THIRD BOARD.

Record of proceedings of the bord of medical examiners, convened at the Navy Department, Washington, D. C., in case of Capt. William N. Jeffers, U. S. N., March 21 *and* 22, 1878.

NAVAL SOLICITOR'S OFFICE,
March 22, 1878.

This record is correct in form and substance, and the evidence sustains the finding and recommendation.

JOHN A. BOLLES,
Naval Solicitor.

NAVY DEPARTMENT,
Washington, March 21, 1878.

Record of proceedings of a board of medical examiners which met in obedience to the order of the Secretary of the Navy, a copy of which is hereto annexed and marked A.

The board met at 12 o'clock noon.

Present, Medical Director M. Duvall, president; Surg. John C. Spear, Surg. James H. Finkham, members, and James C. Dulin, recorder.

Copies of the orders of the members of the board are attached to this record and marked B, C.

Capt. William N. Jeffers, U. S. N., appeared as a candidate for promotion in obedience to an order, a copy of which is appended hereto and marked D.

The board then proceeded to organize, as follows:

The president of the board then swore the recorder to the faithful performance of his duty as recorder.

The recorder then swore the president and members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

The board then proceeded to take up the physical examination in the case.

A certificate of physical qualification, subscribed and sworn to by

Captain Jeffers before the president of the board, was received and read in evidence, and is annexed hereto and marked E.

Two paper writings, one from Medical Director F. M. Gunnell, and one from Medical Inspector A. L. Gihon, U. S. N., members of a board of medical examiners, expressing their dissent at the finding of said board in the case of Captain Jeffers, were read aloud by the recorder; and said paper writings are annexed to this record and marked respectively F and G.

A written statement from Medical Director C. D. Maxwell, U. S. N., duly sworn to, was received and read in evidence, and is appended hereto ard marked H.

A. Y. P. Garnett, M. D., having made answers in writing to certain questions propounded to him, and having made oath to the same in due form of law, said answers were received and read in evidence, and are annexed hereto and marked I.

The board then proceeded to make a careful personal examination of the candidate; and after concluding said examination, the further consideration of the case was postponed until to-morrow, the 22d instant, at 12 o'clock noon, to which time the board then adjourned.

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT,
Washington, March 22, 1878.

The board met pursuant to adjournment.

Present, Medical Director M. Duvall, president; Surgeon John C. Spear; Surgeon James H. Tinkham, members; James C. Dulin, recorder.

The record of the proceedings of yesterday was read and approved.

The board then resumed consideration of the case of Captain Jeffers; and after mature consideration of all the evidence hereto annexed, and marked as aforesaid, and also the personal examination of the candidate herein stated, report as follows:

The board find that Capt. William N. Jeffers, U. S. N., enjoys good health, and is physically sound, with the exception of slight impairment of the mobility of the knee, ankle, and finger joints; some contraction of the hands, and small deposits of chalk stones from acute attacks of gout some years ago. Two members of the board, viz, Surgeons Spear and Tinkham, from long service with Captain Jeffers on board ship in the post, know of their own personal knowledge that these physical defects, though more marked then than now, did not disqualify him for the efficient discharge of all his duties pertaining to the command of ships of war engaged in very active service.

We hereby certify that Capt. William N. Jeffers, U. S. N., is physically qualified to perform all his duties at sea, and recommend him for promotion.

MARIUS DUVALL,
Medical Director and President.
JOHN C. SPEAR,
Surgeon and Member.
JAS. H. TINKHAM,
Surgeon and Member.

JAMES C. DULIN,
Recorder.

A.

NAVY DEPARTMENT,
Washington, March 14, 1878.

SIR: A medical board to examine and report upon the physical qualifications of Capt. William N. Jeffers, U. S. N., a candidate for promotion, is hereby ordered to convene at this department, on Thursday, the 21st inst., at 12 o'clock noon, or as soon thereafter as may be practicable.

The record of its examination, proceedings and findings, with the evidence taken, must in this case be reported to the Secretary of the Navy, duly signed by the president of the board, and all the members, and by its recorder, and if any member dissent from the finding, the fact of his dissent and his reasons therefor, must be entered on the record.

Each record must state fully what physical examination was made, and by whom, and whether or not the board recommend the candidate for promotion.

The board will consist of the following officers, viz: Medical Director Marius Duvall, president; and Surgeons John C. Spear and James H. Tinkham, members.

Mr. James C. Dulin, will act as recorder of the board.

The board will be organized as follows: The president will first swear the recorder to the faithful performance of his duty as recorder, and the recorder will then swear the president and other members of the board, faithfully and impartially to examine and report upon the candidate about to be examined.

A copy of this order, and of every order or notice addressed by the department to the board, or any member of the board to the recorder, or the candidate for promotion, and of every record or writing used as evidence in the case, certified by the recorder, must be attached to the record of proceedings in this case.

The physical qualifications of the candidate at the date of the examination, and at no other time, will be examined or reported.

The duties to which these qualifications relate are the duties of the grade to which the candidate seeks promotion, and not those of any other grade.

You will proceed to Washington, D. C., and report for the above duty on the day herein specified, and when that duty is completed you will return to Baltimore, Md., and resume regular duties.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Medical Director MARIUS DUVALL, U. S. N.,
Baltimore, Md.

A true copy.

JAMES C. DULIN,
Recorder.

B.

NAVY DEPARTMENT,
Washington, March 14, 1878.

SIR: Report on the 21st instant at the department, to Medical Director M. Duvall, for duty as member of the Medical Examining Board of which he is president, and when concluded resume your regular duties.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Surgeon JOHN C. SPEAR, U. S. N.,
Washington, D. C.

A true copy.

JAMES C. DULIN,
Recorder.

C.

NAVY DEPARTMENT,
Washington, March 14, 1878.

SIR: Proceed to Washington, D. C., and report at the department on the 21st instant, to Medical Director M. Duvall, for duty as member of the Medical Examining Board of which he is president, and when concluded you will return to your home and wait orders.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Surgeon JAMES H. TINKHAM, U. S. N.,
Owego, N. Y.

A true copy.

JAMES C. DULIN,
Recorder

D.

NAVY DEPARTMEMT,
Washington, March 14, 1878.

SIR: Present yourself to Medical Director M. Duvall, on the 21st in stant, for examination as to your physical qualifications to perform all your duties at sea, required by section 1493 of the Revised Statutes, by a board of which he is president.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Capt. WM. N. JEFFERS, U. S. N.,
Washington, D. C.

Presented March 21, 1878.

M. DUVALL,
Medical Director, President of the Board.

E.

BOARD OF MEDICAL EXAMINERS,
Washington, March 21, 1878.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all my duties at sea in the grade to which I am a candidate for promotion, and that I am at present free from all bodily ailments.

WILLIAM N. JEFFERS,
Captain, U. S. N.

Subscribed and sworn to before me this 21st day of March, A. D. 1878.

MARIUS DUVALL,
Medical Director, and President of the Board.

F.

I have to dissent from the finding of the majority of the board in the case of Capt. William N. Jeffers, for the following reasons:

It is in evidence before us that Captain Jeffers has efficiently performed the active duties of commander and captain at sea since the attacks of gouty rheumatism which have diminished in some degree the flexibility of his limbs; that he has had no attack of rheumatism for nearly four years; and that, in the opinion of an experienced medical officer who has served with him and knew him well, he is in at least as good condition of health and strength as when he commanded the Swatara in 1866–'68.

I have no doubt that this is the case, and I believe that Captain Jeffers is physically qualified to perform all the duties ashore and afloat that have been or will be performed by a commodore in the Navy.

It does not appear that, in his service of 37 years in war and peace, he has ever failed to perform any duty required of him.

The well-known ability and energy of Captain Jeffers would enable him, in my opinion, to overcome a degree of physical infirmity that might affect the efficiency of stronger persons, and considering the balance of the man, I should feel compelled to give the government the benefit of the doubt, if any rested on my mind, and hesitate to deprive the Navy of the valued services of one of its most efficient and accomplished officers.

F. M. GUNNELL,
Medical Director.

NAVY DEPARTMENT,
Washington, March 20, 1878.

The foregoing is a true copy of the original on file in this department.

JNO. W. HOGG,
Chief Clerk.

G.

BOARD OF MEDICAL EXAMINERS.
NAVY DEPARTMENT, WASHINGTON, D. C.,
February 25, 1878.

The undersigned, while finding Capt. William N. Jeffers, United States Navy, impeded in some of the articulations by former attacks of rheumatic gout, interfering with the full performance of the functions of locomotion and prehension, is yet of the opinion that he is physically qualified to perform efficiently all his duties at sea in the grade to which he seeks promotion, to wit, that of commodore in the Navy; said opinion being based upon the following facts:

First. That while similarly but acutely affected he was found by boards of medical officers to be physically qualified to perform all the duties at sea of the junior and more active grades of commander and captain.

Second. That the medical officers with whom he served at sea in these grades, officers of the highest professional skill and integrity, testify, on oath, that he did efficiently perform all and every one of the duties of these grades.

Third. That one of these medical officers further testifies, on oath, that Captain Jeffers's physical condition at that time was decidedly no better, if as good as it is now.

Fourth. That the medical records of the Navy Department show that he has never been heretofore disabled for duty, for any unusual period, by reason of sickness.

Fifth. That I am convinced, from personal experience as a sufferer from chronic rheumatism, entailing similar interference with the full performance of the functions of locomotion for several years at a time, that it is possible for an officer of Captain Jeffers's known and unquestioned energy, zeal, and determination to do his whole duty, and to do it well, notwithstanding his physical infirmity, however painful; and I am further satisfied that he is capable of greater physical effort and endurance than many other officers now on the active list in junior grades.

Sixth. That it is my professional opinion that in recent years his condition has progressively improved, and that his greater improvement has only been retarded by the sedentary duties of his office as chief of bureau, which for the past five years have confined him to his desk in a posture calculated to aggravate the impeded movements of the knee-joints.

Seventh. That from my own knowledge of the duties which he not only will be but may possibly be required to perform at sea as a commodore in the Navy, I am unable to conceive of any one duty which Capt. William N. Jeffers cannot efficiently and thoroughly perform.

A. L. GIHON,
Medical Inspector, U. S. N., and Member.

NAVY DEPARTMENT,
Washington, March 20, 1878.

The foregoing is a true copy of the original on file in this department.

JNO. W. HOGG,
Chief Clerk.

H.

Statement of Medical Director Charles D. Maxwell, U. S. N.

Question. How long have you been intimately associated with Captain Jeffers?—Answer I have known Captain Jeffers more or less intimately since 1863.

Question. What is his physical condition now as compared with that for the past five or six years?—Answer. I think his health better now than at the time of his promotion to his present rank and than it has been for several years.

Question. Having made a personal examination of Captain Jeffers, do you think him now physically qualified to perform the duties of a commodore at sea?—Answer. My examination of Captain Jeffers was satisfactory, and with my understanding of the duties, I consider him physically qualified to perform those of a commodore at sea.

CHAS. D. MAXWELL,
Medical Director, U. S. Navy.

Subscribed and sworn to before me this 20th day of March, A. D. 1878.
[L. S.]

JAMES C. DULIN,
Justice of the Peace.

I.

A. Y. P. GARNETT, M. D., being duly sworn, made answers to the following questions propounded to him by the recorder of the board, viz:

Question. Did you examine Capt. William N. Jeffers in 1870, for his life-insurance on

a policy of $10,000?—Answer. I did, and found him a good risk, which was accepted by the company.

Q. Having now made a personal examination of Captain Jeffers, what is your impression as to his general condition of health compared with that at the time of the previous examination?—A. His health is equally good as at last examination; while activity of locomotion is impaired, there is no evidence of organic disease.

Q. Having served many years in the Navy, and being familiar with its duties, do you think Captain Jeffers physically qualified to perform the duties of a commodore at sea?—A. I do, the duties being those of command and not execution.

A. Y. P. GARNETT, *M. D.*

DISTRICT OF COLUMBIA,
Washington County, to wit:

On the 20th day of March, A. D. 1878, before me, the subscriber, a justice of the peace in and for the said county and District, personally appeared A. Y. P. Garnett, M. D., and made oath in due form of law that his answers to the foregoing questions are true to the best of his knowledge and belief.

Sworn to before me this 20th day of March, A. D. 1878.

[L. S.]

JAMES C. DULIN,
Justice of the Peace.

Record of proceedings of the naval examining board, convened at the Navy Department, Washington, D. C., in case of Capt. William N. Jeffers, U. S. N., January 15, *and February* 16 *and* 19, 1878.

NAVAL SOLICITOR'S OFFICE,
February 19, 1878.

This record is correct, and the evidence sustains the finding.

JOHN A. BOLLES,
Naval Solicitor.

MARCH 22, 1878.

The same is true of the record of the board of medical examiners, which is hereto attached.

JOHN A. BOLLES,
Naval Solicitor.

EXECUTIVE MANSION,
May 1, 1878.

The finding of the board in this case is approved.

R. B. HAYES.

NAVAL EXAMINING BOARD,
Navy Department, Washington, January 15, 1878.

The board met this day at noon, in obedience to the order of the Secretary of the Navy. A copy of said order is hereto annexed and marked A.

Present, Vice-Admiral S. C. Rowan, president; Rear-Admiral John L. Worden, Commodore George B. Balch, members, and James C. Dulin, recorder.

Capt. William N. Jeffers, U. S. N., appeared as a candidate for examination for promotion, in obedience to an order, a copy of which is hereto appended and marked B.

The order convening the board was then read aloud by the recorder.

The members and recorder were then duly sworn in the presence and hearing of the candidate, as required by said order.

The board having, by vote, designated certain officers of the Navy to whom interrogatories should be forwarded in the case of the candidate, and those officers having duly answered and returned said interrogatories to the board, they were read and received in evidence, and are annexed hereto and marked, respectively, C, D, E, and F.

A summary of service as an officer in the Navy since September 25, 1840, having been submitted to the board by Captain Jeffers, it was read in evidence, and is hereto appended and marked G.

The board then proceeded with the professional examination in the case.

Captain Jeffers was examined in fleet tactics and international law.

At the conclusion of the professional examination of the candidate the board postponed the further consideration of the case until such time as the report of the board of medical examiners will have been received.

NAVAL EXAMINING BOARD,
NAVY DEPARTMENT,
Washington, February 16, 1878.

The board met pursuant to adjournment.

Present, all the members and the recorder.

The record of proceedings in the case of Captain Jeffers was read and approved.

The board then resumed the consideration of the case of Captain Jeffers; and, after full consideration, the president of the board addressed a letter to the department, requesting that the board be furnished with the report of the board of medical examiners in the case of Captain Jeffers, in order that the same may be made a part of the record of proceedings in the case, in conformity with the custom which obtained up to the time the examinations were made. A copy of said letter is hereto appended and marked H.

The board then adjourned to meet at 11 o'clock a. m. on Tuesday next, the 19th instant.

NAVAL EXAMINING BOARD,
NAVY DEPARTMENT,
Washington, February 19, 1878.

The board met pursuant to adjournment.

Present, all the members and the recorder.

Capt. William N. Jeffers, United States Navy, was also present.

The record of the proceedings in the case was read and approved.

A communication from the Secretary of the Navy, in answer to the letter of request of the president of the board, was received, and read aloud by the recorder. A certified copy of said communication is appended to this record and marked I.

The board then proceeded to deliberate upon the evidence in the case, hereto annexed and marked as aforesaid, and also upon the professional examination herein stated, and decided thereon that the mental, moral, and professional fitness of Captain Jeffers to perform all his duties at sea has been established to the satisfaction of said board; and, therefore—

We hereby certify that Capt. William N. Jeffers, United States Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion.

S. C. ROWAN,
Vice-Admiral, and President.
JOHN L. WORDEN,
Rear-Admiral.
GEO. B. BALCH,
Commodore.

JAMES C. DULIN, *Recorder.*

A.

NAVY DEPARTMENT,
Washington, January 15, 1878.

SIR: A naval examining board, for the examination of such officers as may be notified to appear before it as candidates for promotion, is hereby ordered to convene, at this department, on Thursday, the 15th day of January instant, at noon.

The board will consist of yourself, as senior member and president, and of Rear-Admiral John L. Worden and Commodore George B. Balch, as members.

Mr. James C. Dulin will act as recorder.

The board will be organized anew in each case, as follows, viz: The senior member will swear the recorder to the faithful performance of his duty as recorder; the recorder will then swear the members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

A copy of this order, and of all orders addressed by the department to any member of the board or to the recorder, and also the original, or a copy, of every record or paper used in the case for any purpose, must be attached to the record of that case.

No fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into or considered in any case, and the record must show as fully as may be practicable everything which assisted the board in forming its opinion.

The board will by vote designate the officers to whom interrogatories shall in any case be forwarded for answers as to the mental, moral, or professional fitness for promotion of the candidate.

No such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank.

Such witnesses as the candidate may reasonably request to have examined upon written interrogatories, or orally, under oath, administered by the senior member, shall be examined. Whenever such request is by the board deemed unreasonable, it shall be at once referred to the Secretary of the Navy for decision.

Each record must be signed by every member and by the recorder, and must show who of the members concurred in and who, if any, dissented from the opinion of the board.

Whenever the board fails to recommend a candidate for promotion, the record will state whether such failure is owing to his moral, mental, or professional unfitness for promotion.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,
President Examining Board, Washington, D. C.

A true copy.

JAMES C. DULIN,
Recorder.

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
January 10, 1878.

SIR: Report to Vice-Admiral Rowan, on the 15th instant, for the required examinations preliminary to promotion, and when concluded resume regular duties.

By direction of the Secretary of the Navy.

Respectfully,

DAN'L AMMEN,
Chief of Bureau.

Capt. WILLIAM N. JEFFERS,
United States Navy, Washington, D. C.

A true copy.

JAMES C. DULIN,
Recorder.

C.

Interrogatories addressed to Rear-Admiral A. L. Case, U. S. N., in the name of Capt. William N. Jeffers, U. S. N., by a board in session at Washington, D. C., by order of the honorable secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Jeffers?—About thirty years or more.

No. 2. Has ——— sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—In the North Atlantic Blockading fleet during the war of the rebellion in command of the Monitor, &c., and subsequently whilst chief of the Bureau of Ordnance; performed his duties in an efficient and commendable manner.

No. 3. In your association with ——— do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—I do not.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Jeffers do you or not consider him mentally qualified for promotion?—I do fully.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Jeffers professionally qualified for promotion?—I do.

No. 6. What is the general reputation of Captain Jeffers in the Navy as an officer and gentleman?—Excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Jeffers to send him on an important separate service in command of a vessel of war?—Yes.

No. 8. Do you or not consider Captain Jeffers to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—I believe him to be mentally, morally, and professionally fit for all such duties.

A. LUDLOW CASE,
Rear-Admiral, U. S. Navy.

On this 7th day of January, 1878, before me, personally came A. Ludlow Case, who, being by me duly sworn, did depose and say that the foregoing interrogatories by him subscribed were true to the best of his knowledge.

[SEAL.]

HOWARD THORNTON,
Notary Public, Orange Co.

D.

nterrogatories addressed to Rear-Admiral C. R. P. Rodgers, U. S. N., in the case of Capt. William N. Jeffers, U. S. N., by a board in session at Washington, D. C., by order of the honorable Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Jeffers?—Since he was a midshipman.

No. 2. Has Captain Jeffers sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—We served together as chiefs of bureaus at the Navy Department, and we have been frequently thrown together during the last thirty years.

No. 3. In your connection with Captain Jeffers do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—He has always been temperate.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Jeffers do you or not consider him mentally qualified for promotion?—I consider him one of the most intelligent and capable officers of the Navy, and highly qualified for promotion mentally.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Jeffers professionally qualified for promotion?—I consider him eminently qualified for promotion professionally.

No. 6. What is the general reputation of Captain Jeffers in the Navy as an officer and gentleman?—Very high.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Jeffers to send him on an important separate service in command of a vessel of war? I should consider myself very fortunate in having such an able officer to send on important separate service.

No. 8. Do you or not consider Captain Jeffers to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—I do consider him eminently fitted.

C. R. P. RODGERS.
Rear-Admiral, U. S. Navy.

Witnesses:
EDWD. TERRY, *Commander U. S. N.*
A. S. KENNY, *Paymaster U. S. N.*

E.

Interrogatories addressed to Rear-Admiral J. C. Howell, United States Navy, in the case of Captain William N. Jeffers, U, S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Jeffers?—Thirty or forty years.

No. 2. Has Captain Jeffers sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—We have been associated together at the Navy Department. So far as I am able to judge, he has performed his duties efficiently.

No. 3. In your association with Captain Jeffers, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—His habits are perfectly good.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Jeffers, do you or not consider him mentally qualified for promotion?—Undoubtedly.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Jeffers professionally qualified for promotion?—I do.

No. 6. What is the general reputation of Captain Jeffers in the Navy as an officer and gentleman?—None better.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Jeffers to send him on an important separate service in command of a vessel of war?—Most assuredly.

No. 8. Do you or not consider Captain Jeffers to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—I do, emphatically.

J. C. HOWELL,
Rear-Admiral, United States Navy,

Witnesses:

JOHN L. WORDEN,
Rear-Admiral.

R. H. WYMAN,
Commodore, United States Navy.

F.

Interrogatories addressed to Commodore Daniel Ammen, U. S N., in the case of Captain William N. Jeffers, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Jeffers?—Since May, 1861.

No. 2. Has Captain Jeffers sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—We served together on board the Roanoke, I as executive officer, and he as watch officer. He performed his duties efficiently.

No. 3. In your association with Captain Jeffers do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—His habits are excellent; he is not given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Jeffers, do you or not consider him mentally qualified for promotion?—I consider him mentally very well qualified for promotion.

No. 3. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Jeffers professionally qualified for promotion?—I consider him especially well qualified, professionally.

No. 6. What is the general reputation of Captain Jeffers in the Navy as an officer and gentleman?—His reputation is unexceptionable.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Jeffers to send him on an important separate service in command of a vessel of war?—I would send him on important separate service.

No. 8. Do you or not consider Captain Jeffers to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—I consider him mentally, morally, and professionally qualified in a high degree to perform all his duties at sea in a higher grade.

DANIEL AMMEN,
Rear-Admiral.

Subscribed and sworn to before me this 27th day of December, A. D. 1877.
[L. S.]

JAMES C. DULIN,
Justice of the Peace.

Vessels of the U. S. Navy in which Capt. William N. Jeffers has served, from his origina entry into the service, September, 1840, to April, 1873, his last cruise.

Name of Vessel.	Propulsion.	Guns.	Rank.	Duties.	Station.
North Carolina	Sails	74	Midshipman	Watch	Home.
Washington, brig	Sails	4	do	do	Do.
United States	Sails	44	do	do	Pacific.
Congress	Sails	44	do	do	Brazil.
Vixen	S. W	3	Passed Mid	do	Gulf.
Fredonia, store-ship	Sails	4	do	do	Do.
Morris, Coast Survey schooner	Sails	.....	do	Executive	Do.
Falcon, mail steamer	S. W	.....	do	Ex. and Capt	Home.
Illinois, mail steamer	S. W	.....	do	do	Do.
Princeton	Screw	10	do	Nav. and Watch	Do.
Macedonian	Sails	22	do	do	Do.
Alleghany	Screw	10	Master	do	Do.
Germantown	Sails	20	do	Watch	Brazil.
Water Witch	S. W	3	Lieutenant	Ex. and Capt	Do.
Plymouth	Sails	9	do	Nav. and Ex	Gulf.
Brooklyn	Screw	22	do	Watch	Do.
Saratoga	Sails	20	do	do	Do.
Philadelphia	S. W	2	do	Captain	Home.
Roanoke	Screw	44	do	Nav. and Ex	Do.
Underwriter	S. W	3	do	Captain	Do.
Monitor	Iron-clad	2	do	do	Do.
Swatara	Screw	10	Commander	do	Mediterranean.
Constellation	Sails	10	Captain	do	Home.

G.

BUREAU OF ORDINANCE, NAVY DEPARTMENT,
Washington, January 15, 1878.

Summary of service.

I entered the Navy September 25, 1840, as acting midshipman, served four years on board frigate United States on Pacific and Congress on Brazil stations. October, 1845, to Naval School at Annapolis; graduated July, 1846, and ordered to and served through the Mexican war to March, 1848, in steamer Vixen; participated in various battles and skirmishes.

In 1848–'49—On duty at Naval School as acting master and assistant professor of mathematics.

December, 1849, to October 1850—Coast Survey, harbor of Galveston and Gulf ot Mexico.

October, 1850, to March, 1852—Mail steamer service between New York and Aspinwall, Havana, Kingston, and New Orleans; a part of the time in command.

March, 1852—To Princeton as acting master.

November, 1852—Transferred to Macedonian as acting master.

December, 1852—Exploration of Isthmus of Honduras.

September, 1853—To Alleghany as acting master.

October, 1853—Transferred to Germantown; 1853–'54, sloop Germantown; Brazil squadron.

Promoted to master June, 1854.

Promoted to Lieutenant January, 1855.

Transferred to United States steamer Water Witch, survey of La Plata and Panama, 1855–'56.

1857—Preliminary survey of Isthmus of Honduras for Interoceanic Railway.

1858–'59—Gunnery-ship Plymouth, West Indies.

1859–'60—Sloop Brooklyn and Saratoga, West Indies; surveyed Chiriqui Isthmus while attached to Brooklyn.

April and May, 1861—Command of steamer Philadelphia on Potomac River.

May to December, 1861—Frigate Roanoke on blockade off Charleston

December, 1861—Command of steamer Underwriter, Pamlico Sound; battles of Roanoke Island, Elizabeth City, and skirmishes.

March, 1862—Command of Monitor after Worden was wounded; various bombardments, and battle of Drury's Bluff.

Promoted to lieutenant commander July 16, 1862.

September, 1862—Ordnance duty at Philadelphia.

September, 1863, to duty, charge of ordnance-yard, Washington.

Promoted to commander March, 1865.

July, 1865, to command sloop Swatara, West Indies.

Mediterranean and Africa, 1865, '66, '67, '68.

1868-'69, Naval Observatory.
1869-'70, board of examiners.
Promoted to captain July, 1870.
September 30, 1870, to duty as assistant in Bureau of Ordnance.
October, 1871, to command of gunnery ship Constellation, West Indies and coast.
April 10, 1873, and to date, chief of Bureau of Ordnance.

WILLIAM N. JEFFERS,
Captain, Chief of Bureau of Ordnance, with relative rank of Commodore.

Vice-Admiral S. C. ROWAN,
President of Board for the Examination of Officers for Promotion.

H.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 16, 1878.

SIR: Capt. William N. Jeffers, United States Navy, appeared before this board on the 15th January last, as a candidate for promotion, in obedience to the department's order, dated 10th of January, 1878.

The board proceeded with the examination in the case of Captain Jeffers, and after concluding the same postponed further action "until such time as the report of the medical board will have been received."

Previous to the date of the reorganization of the medical board of examiners it was the uniform custom of this board to wait the action of said medical board before pronouncing upon an officer's fitness for promotion.

In the case of Captain Jeffers no report as to his physical fitness for promotion has been received, and this board would respectfully ask that the report of the medical board be furnished it, in order that the same may be made a part of the record of proceedings in the case, in conformity with the custom which obtained up to the time the examinations were made.

I am, sir, very respectfully,

S. C. ROWAN,
Vice-Admiral, and President.

Hon. R. W. THOMPSON,
Secretary of the Navy, Navy Department.

I.

NAVY DEPARTMENT,
Washington, February 18, 1878.

SIR: Your letter of the 16th instant requesting that the naval examining board of which you are president may be furnished with the record of the medical examining board in the case of Capt. William N. Jeffers has been received.

The instructions under which the naval examining board are acting and the orders to take up the case of Captain Jeffers, or any other officer, do not require that the record of the medical board in that or any other case should be laid before the naval examining board.

The boards are separate and distinct. One passes on the physical fitness and the other on the mental, moral, and professional fitness of the candidate for promotion.

Even in a case where the medical examining board reports an officer physically unfit for promotion he is entitled, independently of that, if he so desires, to an examination as to his mental, moral, and professional fitness, so that if he can establish it he may receive the credi due therefrom.

The naval examining board will, therefore, please report after examination on the mental, moral, and professional fitness of Capt. William N. Jeffers for promotion, and make a recommendation for promotion or not, according to their finding.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,
President Naval Examining Board, Washington, D. C.

A true copy.
JAMES C. DULIN,
Recorder.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 83.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

The petition of Lewis Leffman, ordnance-sergeant, United States Army, praying for his retirement with the full pay of his grade.

MAY 23, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 22, 1878.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives the petition of Lewis Leffman, ordnance-sergeant, United States Army, for retirement on the full pay of his grade.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

FORT NIAGARA, N. Y., *May* 7, 1878.

GENERAL: I have the honor to transmit my petition to Congress for retirement (with the full pay and allowances of my grade of ordnance-sergeant), asking that honorable body for the same indulgence as I am told is being contemplated in the case of Marine-Sergeant James Medcalf, whose bill (4478) has been introduced into the House of Representatives. I hope my military superiors, the Adjutant-General and honorable Secretary of War, will add such indorsements (based upon my record) as will serve to strengthen my imperfect appeal.

I have served in the United States Army since 1824, and had previously served in Europe, receiving the Waterloo medal from the Hanoverian Government. I am a soldier of sixty years' service. I desire to provide for my family a permanent home, and it is this consideration which impels me to appeal to Congress for consideration and reward for my own length of service.

I am, general, very respectfully, your obedient servant,

LEWIS LEFFMAN,
Ordnance-Sergeant, United States Army.

ADJUTANT-GENERAL, UNITED STATES ARMY,
Washington, D. C. (through Post Commander).

PETITION OF ORDNANCE-SERGEANT LEWIS LEFFMAN, U. S. ARMY.

To the Senate and House of Representatives of the United States of America:

Your petitioner entered the Army of the United States by enlistment the 31st of August, 1824, as a private in Company E, Second United States Infantry, and was promoted to a corporalcy and sergeantcy during the first three months of his service. Remained in the Second Infantry until March, 1834. Joined the Ordnance Department as a sergeant of ordnance in 1834, and served for three years. In 1837, your petitioner enlisted in the Eighth United States Infantry as first sergeant, Company I. Was made ordnance-sergeant, United States Army, 20th July, 1840, in which capacity he continues to serve to-day.

Your petitioner very respectfully sets forth that he has served in the United States Army for nearly fifty-four years, as he believes, to the satisfaction of his superiors (as his various discharges attest); but that now he is old and unfitted for active service, and that he therefore prays your honorable body to retire him with the full pay and allowance of his grade of ordnance-sergeant, that he may devote his remaining days to making provision for his family and descendents.

LEWIS LEFFMAN,
Ordnance-Sergeant, U. S. Army.

FORT NIAGARA, N. Y., *May* 7, 1878.

[First indorsement.]

HEADQUARTERS FORT NIAGARA, N. Y.,
May 8, 1878.

Respectfully forwarded to the Assistant Adjutant-General, headquarters Department of the East.

This old soldier is so generally known to the commanders of the Army, that any indorsement concerning him seems superfluous. He has served long and most faithfully, illustrating few of the faults and all of the virtues of the veteran. He loves to dwell upon his interviews with distinguished military officers, most of whom, either dead or living, have expressed an interest in him. To these, including the department commander, I respectfully commit his case, hopeful that they will advance the petitioner's claim to the favorable consideration and indulgence of Congress.

G. A. DE RUSSY,
Major Third Artillery, Commanding Post.

[Second indorsement.]

HEADQUARTERS DEPARTMENT OF THE EAST,
New York, May 11, 1878.

Respectfully forwarded to the Adjutant-General of the Army, inviting attention to the indorsement in this case by Ordnance-Sergeant Leffman's present commanding officer. The question of making provision for this deserving old soldier, and for similar cases, is submitted for the consideration of higher authority.

WINFD. S. HANCOCK,
Major-General, Commanding.

[Third indorsement.]

ADJUTANT-GENERAL'S OFFICE.
May 18, 1878.

Respectfully submitted to the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

45TH CONGRESS, 2d Session. } SENATE. { Ex. DOC. No. 85.

LETTER

FROM

THE CHIEF CLERK OF THE WAR DEPARTMENT,

RECOMMENDING

An additional appropriation for the purchase of the site of Ringgold Barracks, in the State of Texas.

MAY 24, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 22, 1878.

The Secretary of War has the honor to represent to the United States Senate that the district court of Starr County, State of Texas, by decree dated April 5, 1878, having fixed $20,000 as the price to be paid by the United States for the site of Ringgold Barracks, Tex., with $500 additional for costs, and $29.49 for clerk and sheriff's bill, it is respectfully recommended that the necessary amount for the purchase of said site be appropriated.

It is to be noted that the department has remaining upon the books of the Treasury to the credit of the fund for this purchase $10,000, appropriated by act of March 3, 1875 (18 Stat., 391); so that to complete the purchase under the decree of the court an appropriation of $10,529.49 will suffice.

H. T. CROSBY, *Chief Clerk,*
For the Secretary of War, in his absence.

The PRESIDENT *of the United States Senate.*

○

45TH CONGRESS, 2d Session. } SENATE. { Ex. DOC. No. 86.

LETTER

FROM THE

ACTING SECRETARY OF THE TREASURY,

RECOMMENDING

An amendment to the bill (H. R. 2486) for extending the operations of the Light-House Board over the Illinois River, and for other purposes.

MAY 24, 1878.—Referred to the Committee on Commerce and ordered to be printed.

TREASURY DEPARTMENT, *May* 23, 1878.

SIR: I have the honor to transmit herewith a copy of a letter of the 21st instant from Commander George Dewey, United States Navy, naval secretary of the Light-House Board, stating that the act of June 23, 1874, extending the jurisdiction of the board over the Mississippi, Missouri, and Ohio Rivers, contains no provision by which the board can enforce the lighting of a bridge owned or operated by an independent corporation, &c., and asking that the matter may be brought to the attention of the Committee on Commerce of the Senate, which has now in consideration House bill No. 2486 "for extending the operations of the Light-House Board over the Illinois River, and for other purposes," with the view to the insertion in said bill, if deemed advisable, of the following amendment, viz:

SEC. 2. That all parties owning, occupying, or operating bridges over any portion of the Mississippi River, or its tributaries, which are now or may hereafter be placed under the jurisdiction of the Light-House Board, shall maintain, at their own expense, from sunset to sunrise, throughout the year, such lights as may be required by the Light-House Board for the security of navigation.

I have respectfully to recommend that action may be had in the matter agreeably to the request of the Light-House Board.

Very respectfully,

JOHN B. HAWLEY,
Acting Secretary.

Hon. WILLIAM A. WHEELER,
President United States Senate.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, May 21, 1878.

SIR: I have the honor to call your attention to the following facts relating to the establishment of lights on bridges over the Mississippi, Missouri, Ohio, and Illinois Rivers.

By the act of June 23, 1874 (18 Stat., 220), the jurisdiction of the

Light-House Board was extended over the Mississippi, Missouri, and Ohio Rivers, "for the establishment of such beacon lights, day beacons, and buoys as may be necessary for the use of vessels navigating those streams." There is nothing in the terms of this act which provides a means by which the board can enforce the lighting of a bridge owned or operated by an independent corporation. The fact that this was not provided for seems to have been recognized by Congress, as in the acts of July 8, 1876 (19 Stat., 77, 205), for establishing bridges over the Missouri River at Nebraska City and at Sioux City, respectively, a provision is made in each case that such lights shall be maintained on the bridge as the Light-House Board may direct.

There are, however, authorized bridges which are not required by law to maintain lights. Such, for instance, is the bridge at Kansas City, Mo., the owners of which pay no attention to the requirements of the Light-House Board. It is at once obvious that the safety of navigation is greatly imperiled by the refusal of any company to conform to the general system of lighting bridges adopted by the Light House Board. In order that the proper legal authority may be given to the board to secure the safety of navigation, it seems desirable that the provisions of section 5 of the act of December 17, 1872 (17 Stat., 399) be revived and extended to all the Western rivers that are now or may hereafter be under the jurisdiction of the Light-House Board.

It is suggested that a clause like the following may be with propriety inserted as an amendment to House bill No. 2486, "for extending the operations of the Light-House Board over the Illinois River, and for other purposes:"

"SEC. 2. That all parties owning, occupying, or operating bridges over any portion of the Mississippi River or its tributaries, which are now or may hereafter be placed under the jurisdiction of the Light-House Board, shall maintain, at their own expense, from sunset to sunrise, throughout the year, such lights as may be required by the Light-House Board for the security of navigation."

The bill which I have mentioned has passed the House of Representatives, and is now before the Committee on Commerce of the Senate.

I have, therefore, the honor to recommend that the attention of that committee may be called to this subject.

Very respectfully,

GEO. DEWEY,
Naval Secretary.

The Hon. the SECRETARY OF THE TREASURY.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 87.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

TRANSMITTING,

In compliance with a Senate resolution of May 24, 1878, a copy of the memorial of B. F. Overton, governor of the Chickasaw Nation, praying for a rehearing in the matter of the Chickasaw Nation permit law.

MAY 28, 1878.—Ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1878.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate of the United States adopted on the 24th instant, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to furnish the Senate with a copy of the memorial of B. F. Overton, governor of the Chickasaw Nation, praying for a rehearing in the matter of the Chickasaw Nation permit law, and not embraced in the Senate Ex. Doc. No. 74, in response to resolution of the 17th ultimo.

And in accordance with the direction therein contained, a copy of the printed memorial is herewith respectfully transmitted.

Very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The PRESIDENT OF THE SENATE.

PERMIT LAW OF THE CHICKASAW NATION.

WASHINGTON, D. C., *March* 13, 1878.

SIR: On behalf of the Chickasaw Nation, I have the honor to request that you will reconsider your decision made on the 27th of August, 1877, respecting the "permit law" of that nation.

Your conclusion that this law is invalid appears to be based upon the following grounds:

1. That the government of the Chickasaw Nation possesses no power of taxation which is not "*conferred*" by some treaty or statute of the United States; that no power of taxation has ever been "*conferred*" upon the Chickasaw Nation except by article 47 of the treaty of April 28, 1866; and that the conditions precedent and subsequent prescribed in that treaty have never been complied with.

2. That all persons not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw Nations were excepted from the government and control of the Choctaw and Chickasaw Nations by article 7 of the treaty of June 22, 1855.

3. That by article 43 of the treaty of April 28, 1866, the Chickasaw government is prohibited from expelling persons, not citizens or members of the nation, who are employed as teachers, mechanics, or agriculturists, except for crime committed; and that the Government of the United States is not bound by that article to remove such persons.

I.

I respectfully submit that if your predecessor, in his letter of April 15, 1876, which virtually constitutes the first of the three grounds above stated, meant that these nations had no power of taxation which was not expressly and particularly conferred by treaty or act of Congress, he mistook the law; but if, on the other hand, he meant that their power of taxation had not been recognized either particularly and expressly, or generally and impliedly, by treaty or statute, then he mistook the facts.

For ninety years the Government of the United States has treated with the Indian nations, and it has always *recognized*, *not conferred*, their governmental powers. It is possibly true that the administrative officers of the Government of the United States are authorized to recognize the possession by these nations of only such powers of government as have been generally, or particularly, expressly, or by implication, recognized by treaty or by statute. But the proposition that any of their governmental powers are actually conferred by, or derived from, the United States, is inconsistent with all the treaties and with all the acts of legislation and judicial decisions growing out of, or relating to, such treaties.

Of course I do not mean that in these treaties the particular power of taxation has been singled out and expressly named. That is not true of any of the powers of government. But the right of self-government, in broad and general terms, is recognized. An essential and primary element of that general power is the particular power of taxation. It may be true that barbarous nations do not exercise this power; but then it is also true that they possess it, whether they exercise it or not. And it is furthermore true it is not the policy, any more than the right, of the United States, to compel the Chickasaw Nation to be a barbarous nation.

From the numerous judicial decisions and treaties, recognizing the unrestricted right of self-government as inherent in these nations, and not conferred upon them by the United States, I beg leave to cite the extracts appended to this communication. If they do not recognize the power of taxation as a part of the general power of these nations, I am unable to understand what particular power they do so recognize. I venture to hope that, upon an examination of these treaties and judicial decisions, you will conclude that your predecessor was mistaken in his letter of April 15, 1876, whether he meant that the Indian nations had no power to tax except such as was expressly and particularly conferred by treaty or act of Congress, or meant that no such power had ever, in fact, been recognized by treaty or by statute.

Suppose a treaty between the United States and Great Britain to contain provisions like those contained in the subjoined extract from the Indian treaty of 1855, in the following words: "The people of Great

Britain shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their limits," excepting certain persons named. And suppose the Government of the United States should claim that by this clause it did not recognize the power of taxation as a part of the governmental power of Great Britain. Such a claim would obviously be groundless, not to say preposterous. But is such a claim any less objectionable in the case of a treaty between the United States and the Choctaw and Chickasaw Nation?

The Supreme Court of the United States, in the opinion appended to this communication, enunciated the following doctrine:

> The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. * * *
>
> These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence, its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its right of self-government under the guaranty and protection of one or more allies.
>
> In the executive, legislative, and judicial branches of our government we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state or separate community; not a foreign, but a domestic community; not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.

Why, then, should the same words mean any less in a treaty between the United States and the Indian nations than in a treaty between the United States and European nations? Is it because the Indians have not in former times levied taxes like European nations? Or is the "unrestricted" self-government of the Indian nations to be restricted to the methods heretofore employed? Is it to be arbitrarily robbed of the elements and possibilities of progress and improvement which necessarily belong to all governments? If similar clauses in a treaty with Great Britain would not exclude such changes of system as progress might bring, why should these clauses in a treaty with the Indian nations have that effect? There can be but one answer. The unrestricted right of self-government and full jurisdiction over persons and property involve the right to make such changes of methods as advancement in civilization or change of circumstances may suggest. Such is the view expressed by the court in the same case, in the following words:

> The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed so soon as it shall be administered upon the enlightened principles of reason and justice?

If the Chickasaw Nation shall ever adopt such a system of taxation as is suggested in article 47 of the treaty of 1866, it will not have *derived* the power to adopt the system from that article; but will exercise it as a part of the unrestricted power of self-government inherent in the nation, and recognized by the United States in numerous treaties, statutes, and judicial decisions.

I hope you may conclude that by the treaties and judicial decisions cited the United States have recognized the inherent and unrestricted

right of the Indian nations to govern themselves, and that among the powers of self-government so held by the Indians is included the power of taxation. I trust you will not decide that the power of taxation is to be excluded from the governmental powers of these nations, merely because it is a power ordinarily exercised by enlightened, and not by barbarous, nations, but will agree with the Supreme Court that self-government of the Indians "does not become more objectionable, as it assumes the basis of justice and the forms of civilization." I trust that, if you hold the permit law to be a tax law, you will find no objection to its validity in the circumstance that the power of taxation has not been *expressly conferred* upon the Chickasaw government by any treaty with, or statute of, the United States.

II.

Assuming, then, that the power of taxation is inherent in the Chickasaw Nation, as in other nations; that its existence as an essential portion of the general governmental power of that nation has been impliedly recognized by the treaties, statutes, and judicial decisions of the United States for almost one hundred years; and that the want of an express grant of the power of taxation to the Chickasaw government, by treaty or act of Congress, does not affect the validity of the permit law, even though it be regarded as a tax law, I proceed to inquire whether any objection to the validity of the law is to be found in article 7 of the treaty of 1855. That article stands in the following words:

> ART. 7. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the *unrestricted right of self-government and full jurisdiction* over persons and property within their respective limits; excepting, however, all persons or their property who are not by birth, adoption, or otherwise, citizens or members of either the Choctaw or Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now, or may be, in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws and Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes. (11 Stats., 612, 613.)

I concede that, notwithstanding their possession of the power of taxation, as a part of their general power of self-government, if this treaty stipulation deprived them of the right to enact the particular statute known as the permit law, they are bound by the agreement, and the permit law, whether it is or is not a tax law, must be held null and void. But it seems to me that there is no repugnancy between this stipulation of the treaty and the permit law. That part of article 7 which precedes the exception is a renewed recognition of inherent rights which the United States had *often recognized before*, but never, either at the making of this treaty or at any other time, pretended to *confer* upon the Choctaw and Chickasaw nations. The exception itself is a limitation of these rights, which limitation could only be made by treaty. And whatever is not by the exception clearly taken out of the general power recognized by the preceding clause must remain a part of that power.

If the effect of the exception were to stipulate that the Choctaw and Chickasaw nations should have *no jurisdiction whatever* over persons not citizens or members of the tribes, I do not see how it could impair

the right of the Chickasaw legislature to enact the permit law. The provision of that law is that no citizen of a State or Territory shall reside in the Chickasaw Nation as an employé of a Chickasaw without an annual permit from the Chickasaw government, for which the sum of $25 is payable in each case. The enforcement of this law does not seem to me to be an exercise of *any jurisdiction* in any such sense as that in which the word jurisdiction is used in the treaty, or in which it is ordinarily used. It would not seem to be an exercise of jurisdiction in any such sense, or in any just sense, over subjects of the empire of China, to forbid their entry into the United States without permits from your government. It would not be an exercise of jurisdiction over a British subject to compel him to pay the ordinary import duty on his property, and tonnage tax upon his ship, on landing in the United States.

Foreign sovereigns and their ambassadors are exempt from the jurisdiction of your government. Is it an exercise of jurisdiction over an ambassador to compel him, as a condition of residence in your country, to observe the rules imposed upon ambassadors by the law of nations? Would it be an exercise of such jurisdiction for the sergeant-at-arms of the Senate or House of Representatives to remove an ambassador from the House or Senate for disorderly behavior? When Mr. Justice Miller repressed disorderly conduct on the part of Dom Pedro, in the Supreme Court, was there an exercise of jurisdiction over the Emperor of Brazil?

If, then, the enforcement of the permit law can, in any sense, be called the exercise of *any jurisdiction* whatever, it does not seem to be the exercise of any jurisdiction which may be fairly said to be comprehended within the meaning of the term used in the treaty.

But, then, the effect of the exception in article 7 is not to stipulate that the Indian governments shall have no jurisdiction whatever over persons not citizens or members of their tribes. The stipulation is that the Choctaw and Chickasaw Nations shall not have *full jurisdiction* over persons not citizens, or members of their tribes. The enactment of the permit law does not seem to me to involve an exercise of the full jurisdiction prohibited by this treaty. It certainly is not *in itself* an exercise of *full jurisdiceion* over all persons concerned. Nor is it in fact accompanied or followed by the exercise of *full jurisdiction* over these persons.

If it is an assertion of jurisdiction, in any sense or to any extent, it certainly is not an assertion of full jurisdiction to compel a foreign ambassador, as a condition of the use of your mails, to procure a permit in the form of a postage-stamp; or to require him, as a condition of remaining in your country, to observe the rules imposed upon ambassadors by the law of nations; or to compel him, as a condition of entering the halls of your supreme legislature or Supreme Court, to observe the rules imposed upon visitors by those bodies. Is it any more an assertion of *full jurisdiction* over white persons by the Chickasaw Nation to compel them, as a condition of entering the Territory, to procure a permit from the Chickasaw Government?

The persons in question are not obliged to enter the Chickasaw Nation. They can remain without, and so avoid the necessity of obtaining the permits. Nor is there any obligation resting on the Indian government to admit persons who desire to be employed by individual Indians, or whom individual Indians desire to employ. Nowhere in the treaties can any clause be found imposing any such obligation. And this brings me to the third ground on which your decision rests.

III.

I respectfully submit that no obligation to admit such persons is imposed by article 43 of the treaty of 1866. That article is framed in the following words:

ART. 43. *The United States promise and agree* that no white person, except officers, agents, and employés of the government, and of any internal improvement company, or persons traveling through, or temporarily sojourning in, the said nations, or either of them, *shall be permitted to go into said Territory*, unless formally incorporated and naturalized, by the joint action of the authorities of both nations, into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but *this article is not to be construed* to affect parties heretofore adopted, or *to prevent* the employment temporarily of white persons, who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had, in this connection, by either of the said nations.

I submit that this article does not prohibit the expulsion by the Chickasaw government of white persons employed as teachers, mechanics, or agriculturists by individual Indians. The article does not touch upon the *duty of the Chickasaws* to receive such persons, or their power to remove them. It merely pledges the United States to prevent the entrance of white persons into the Territory, with certain indicated exceptions, and declares that *the obligation so assumed by the United States shall not* "*prevent* the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture." It nowhere provides, nor purports to provide, that such persons *shall be admitted.* What it does provide is that *its own stipulation shall not exclude* such persons. It neither binds the United States to remove them, nor forbids the Indians to exclude them. It leaves the question of their admission or exclusion to the operation of other rules or laws.

To be sure, this article does not *confer* upon the Chickasaw Nation the power to enact a permit law, or to exclude those who seek to enter the Territory in defiance of its provisions. But that is not the question. The question is whether it *prohibits* the enactment of such a law or the exclusion of such persons by the Chickasaw government. And that it does not purport to do. If, then, they had this power before, and independently of, the treaty of 1866, it was not taken away by that treaty. That they had the power to prevent the entry of white teachers, mechanics, and agriculturists, and to forbid or regulate their employment, before the treaty of 1866, is very clear; indeed, before the treaty of 1866, such persons were interdicted persons in the Chickasaw country. They fell within the class declared "intruders" in article 7 of the treaty of 1855. The Government of the United States was itself, by the terms of that article, bound to remove them, *unless* they were permitted to remain by the Choctaw and Chickasaw governments, with the consent of the United States Indian agent. And as there is nothing in article 43 of the treaty of 1866 to compel the Chickasaws to admit such persons, so is there nothing of the kind in article 7 of the treaty of 1855, or in any other treaty.

In article 7 of the treaty of 1855, the United States promise to remove certain intruders. From this class of "intruders" there is, in that article, no exception of persons employed as teachers, mechanics, or farmers, by individual Indians, *unless* such persons are permitted by the Indian governments, with the consent of the United States Indian agent, to reside in the nation. In article 43 of the treaty of 1866, the United States do not, according to your construction of that article,

promise to remove those whites who are employed as teachers, mechanics, or farmers, by individual Indians, even though they are so employed in disregard of the authority of the Indian governments. Now, it seems to be assumed that because the United States in the first case *did promise* to remove these people, therefore the Chickasaws were divested of their own right to do that; and in the latter case that because the United States *did not promise* to remove them, therefore the Chickasaws were divested of their right to remove them. Evidently these assumptions cannot both be correct. I think they are both erroneous. I think that the *promise*, or *want of a promise*, on the part of the United States to remove these persons involves no implied prohibition of their removal by the Chickasaws themselves.

I think the Government of the United States would be slow to concede that an arrangement by which it should undertake to capture and punish cattle-thieves in Mexico would, by implication, exempt Mexico from the obligation to capture and punish those offenders; as certainly Mexico would be slow to concede that she was by such treaty deprived of her right to capture and punish them.

I am equally at a loss to see how a promise by the United States to exclude or remove offenders from the Chickasaw Nation could deprive the Chickasaw government of the right to do it. Nor is it any easier for me to see how a want of a promise of this kind on the part of the United States could deprive the Chickasaw Nation of its rights in the premises.

It is not a case in which the maxim that the specification of one thing excludes another has any applicability. It would be as reasonable to invoke that maxim to show that a promise, on the part of one government, to desist from piracy, or slave-trading, bound another government to persist therein; or that a treaty stipulation, binding China to restrict her emigration to the United States, excluded the exercise of the power of self-protection in that regard by the United States.

There are certain considerations which render a re-examination of your decision of the highest importance to the Chickasaws and other Indian nations. Those nations, on account of their geographical position and the value of their lands and mines, are exposed to the machinations of swarms of covetous whites, who are as fertile in resources as they are unprincipled in character. It would be difficult for a government of the most enlightened white men to sustain itself if it were embarrassed by the presence of a horde of such men within its territorial limits, over whom it could exercise no jurisdiction. To these Indian governments the perplexities and difficulties which result from the license afforded to bad men by your decision will be well-nigh intolerable. There are already in our midst many persons who are in league with our greedy enemies to ruin our governments; and with the connivance of these persons swarms of so called laborers will invade our country, to defy our laws, and bring misfortune and misery upon our people and disgrace upon our government. The people of the United States, when they reproach us for permitting our country to become an asylum for outcasts, and our government to become turbulent, disorderly, and weak, may forget that it is the Government of the United States which compels our country to become and remain the asylum for their scoundrels, and deprives us of the power of governing them while they live in our midst.

Very respectfully, your obedient servant,

B. F. OVERTON,
Governor Chickasaw Nation.

Hon. CARL SCHURZ,
Secretary of the Interior.

[*Extracts from judicial decisions and treaties.*]

Worcester *v.* The State of Georgia, 6 Pet., 556.—Opinion by Chief Justice Marshall:

This treaty, thus explicitly recognizing the national character of the Cherokees and their right of self-government; thus guaranteeing their lands, assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force. (p. 556.)

All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States. (p. 557.)

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term nation, so generally applied to them, means a people distinct from others. The Constitution, by declaring treaties already made, as well as those to be made, the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. (pp. 559, 560.)

In opposition to this original right, possessed by the undisputed occupants of every country, to this recognition of that right, which is evidenced by our history, in every change through which we have passed, is placed the charters granted by the monarch of a distant and distinct region, parceling out a territory in possession of others whom he could not remove, and did not attempt to remove, and the cession made of his claims made by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it, and the settled doctrine of the law of nations, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its rights of self-government under the guarantees and protection of one or more allies.

The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States. (pp. 560, 561.)

It must be admitted that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a state. In the management of their internal concerns they are dependent on no power. They punish offenses under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war and form treaties of peace. The exercise of these and other powers gives to them a distinct character as a people, and constitutes them, in some respects, a state, although they may not be admitted to possess the right of soil. (p. 581.)

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to

the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. (p. 582.)

By numerous treaties with the Indian tribes, we have acquired accessions of territory of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties, but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people and as being vested with rights which constitute them a state or separate community—not a foreign, but a domestic community—not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation. (p. 583.)

Much has been said against the existence of an independent power within a sovereign state; and the conclusion has been drawn that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a State. The refutation of this argument is found in our past history. That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance where the State laws have been generally extended over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently.

The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed as soon as it shall be administered upon the enlightened principles of reason and justice?

Are not those nations of Indians who have made some advances in civilization better neighbors than those who are still in a savage state? And is not the principle as to their self-government, within the jurisdiction of a State, the same. (pp. 589, 590)?

The residence of Indians, governed by their own laws, within the limits of a State, has never been deemed incompatible with State sovereignty until recently. And yet, this has been the condition of many distinct tribes of Indians since the foundation of the Federal Government. (p. 591.)

It has been shown that the treaties and laws referred to come within the due exercise of the constitutional powers of the Federal Government; that they remain in full force, and, consequently, must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guaranteed to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces, the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them for the exercise of those rights which have been most solemnly guaranteed to them by the national faith. (p. 595.)

Indian tribes are states, in a certain sense, though not foreign states or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. They are not states within the meaning of any one of those clauses of the Constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are states, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts. (Holden *v.* Joy, 17 Wallace, 242.)

TREATY WITH THE DELAWARES, SEPTEMBER 17, 1778.

ARTICLE 2. That a perpetual peace and friendship shall from henceforth take place and subsist between the contracting parties aforesaid through all succeeding generations; and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their

abilities, till their enemies are brought to reasonable terms of accommodation; and that, if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect. (7 U. S. Stats., 13.)

TREATY WITH THE WYANDOTS, JANUARY 21, 1785.

ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Wyandot and Delaware nations in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please. (7 U. S. Stats., p. 17.)

TREATY WITH THE CHEROKEES, NOVEMBER 28, 1785.

ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary, which are hereby allotted to the Indians for their hunting-grounds, or having already settled, and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish them or not as they please: *Provided, nevertheless*, That this article shall not extend to the people settled between the fork of French Broad and Holstein rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by. (7 U. S. Stats., 19.)

TREATY WITH THE WYANDOTS, JANUARY 19, 1789.

ARTICLE 9. If any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said nations, he and they shall be out of the protection of the United States, and the said nations may punish him or them in such manner as they see fit. (7 U. S. Stats., 30.)

TREATY WITH THE CREEKS, AUGUST 7, 1790.

ARTICLE 6. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the Creeks' lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please. (7 U. S. Stats., 36.)

TREATY WITH THE CHEROKEES, JULY 2, 1791.

ARTICLE 8. If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please. (7 U. S. Stats., 40.)

TREATY WITH THE WYANDOTS, ETC., AUGUST 3, 1795.

ARTICLE 6. If any citizen of the United States, or other white person or persons, shall presume to settle upon the lands now relinquished by the United States, such citizen or other person shall be out of the protection of the United States; and the Indian tribe on whose land the settlement shall be made may drive off the settler, or punish him in such manner as they shall think fit; and, because such settlements, made without the consent of the United States, will be injurious to them, as well as to the Indians, the United States shall be at liberty to break them up and remove and punish the settlers, as they shall think proper, and so effect that protection of the Indian lands hereinbefore stipulated. (7 U. S. Stats., 52.)

TREATY WITH THE CHOCTAWS, SEPTEMBER 27, 1830.

ARTICLE 4. The government and people of the United States are hereby obliged to secure to the said Choctaw Nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws, except such as from time to time may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as may and which have been

enacted by Congress to the extent that Congress, under the Constitution, are required to exercise a legislation over Indian affairs. (7 U. S. Stats., pp. 333, 334.)

SAME TREATY.

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them: *Provided, always,* That they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same. (7 U. S. Stats., 481.)

TREATY WITH THE CREEKS AND SEMINOLES, JANUARY 4, 1845.

ARTICLE 1. The Creeks agree that the Seminoles shall be entitled to settle in a body, or separately, as they please, in any part of the Creek country; that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinction shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other. (9 U. S. Stats., 821.)

TREATY WITH THE CHEROKEES, AUGUST 6, 1846.

ARTICLE 2. No one shall be punished for any crime or misdemeanor except on conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offense. And it is further agreed all fugitives from justice, except those included in the general amnesty herein stipulated, seeking refuge in the Territory of the United States, shall be delivered up by the authorities of the United States to the Cherokee Nation for trial and punishment. (9 U. S. Stats., 872.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, JUNE 22, 1855.

ARTICLE 4. The government and laws now in operation, and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

ARTICLE 7. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribes, and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States agent (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals as are now or may be in the employment of the government, and their famiiies; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes. (11 U. S. Stats., 612, 613.)

TREATY WITH THR CREEKS AND SEMINOLES, AUGUST 7, 1856.

ARTICLE 15. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; and all persons

not being members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agents for said tribes, respectively (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals, with their families, as may be in the employment of the Government of the United States; all persons peaceably traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such persons as may be permitted by the Creeks or Seminoles, with the assent of the proper authorities of the United States, to reside within their respective limits, without becoming members of either of said tribes.

ARTICLE 25. The Creek laws shall be in force and continue to operate in the country herein assigned to the Seminoles, until the latter remove thereto, when they shall cease and be of no effect. (11 U. S. Stats., 703, 704, 705.)

TREATY WITH THE SEMINOLES, MARCH 21, 1866.

ARTICLE 7. The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however*, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 U. S. Stats., 758.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, APRIL 28, 1866.

ARTICKE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively. (14 U. S. Stats., 771.)

ARTICLE 38. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws, in all respects as though he was a native Choctaw or Chickasaw.

ARTILLE 45. All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation theretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty. (14 U.S. Stats., 779, 780.)

TREATY WITH THE CREEKS, JUNE 14, 1866.

ARTICLE 10. The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of person and property within the Indian Territory: *Provided, however*, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 U. S. Stats., 788.)

TREATY WITH THE CHEROKEES, JULY 19, 1866.

ARTICLE 5. The inhabitants electing to reside in the district described in the preceding article, shall have the right to elect all their local officers and judges, and the number of delegates, to which, by their numbers, they may be entitled in any general council, to be established in the Indian Territory under the provisions of this treaty, as stated in article 12; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district not inconsistent with the constitution of the Cherokee Nation or the laws of the United States: *Provided*, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district, as hereinbefore provided, and shall hold the same rights and privileges, and be subject to the same liabilities, as those who elect to settle in said district under the provisions of this treaty: *Provided, also*, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules and regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void. (14 U. S. Stats., 800, 801.)

O

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 88.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of May 13, 1878, *information in relation to the cost of the proposed improvement of the harbor at Norfolk, Va.*

MAY 28, 1878.—Referred to the Committee on Commerce and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 25, 1878.

The Secretary of War has the honor to transmit to the United States Senate a letter of the 23d instant from the Chief of Engineers, and accompanying report of the advisory board, in relation to the harbor of Norfolk, Va., with estimate of the cost of the improvements proposed, called for by Senate resolution of May 13, 1878.

GEO. W. McCRARY,
Secretary of War.

To the PRESIDENT *of the United States Senate.*

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 23, 1878.

SIR: I beg leave to acknowledge the reference to this office for report of the resolution of the Senate of the United States of the 13th instant, "that the Secretary of War be requested to furnish the Senate with the late report of advisory board relating to the harbor of Norfolk, Va., together with the estimates for the work recommended," and, in compliance therewith, to submit the inclosed copy of the report of the board, together with the letter of the chairman submitting it to the Secretary of War, and the report of Mr. S. T. Abert, United States civil engineer, to whom it was referred.

It will be seen that the cost of the improvement proposed by the board is estimated by Mr. Abert at $317,955.

The resolution of the Senate is herewith respectfully returned.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

HON. GEO. W. McCRARY,
Secretary of War.

Letter of Commodore T. H. Stevens, United States Navy.

WASHINGTON, D. C., *May* 6, 1878.

SIR: Having completed our duties in regard to the establishment of the port-warden lines of the *occupied* portions of the harbor of Norfolk,

we have had under consideration a plan for the general improvement of the harbor and its approaches. We find that from various causes there has been of late years a decrease in the width and also in the depth of the channel, and that the harbor itself has been gradually shoaling. These changes are due to the deflection of the natural forces of the current in some sections, owing to the undue extension of certain points, to the erection of bridges and obstructions sunk in the channel-way during the late war, and for the want of proper police regulations heretofore to prevent the harbor being used indiscriminately as a dumping-ground for all kinds of *débris* from vessels at anchor in the harbor or secured to its wharves. These are some of the principal causes which, combined, have impaired to some degree one of the finest natural harbors in the country.

To restore the integrity of the harbor, and to make it subservient to the increasing wants of commerce, will require extensive dredging, involving liberal expenditures.

The general government has here the most important naval station south of New York, and upon which millions of dollars have already been expended. Located upon a site selected by the fathers of the Navy, by reason of its great natural advantages, in close proximity to the pitch, tar, turpentine, and lumber and ship's timber regions of the South, and to the coal and iron deposits of both the Virginias, admirably protected by its remoteness from the sea from any hostile demonstrations from without, with a climate where labor yields its best returns, and where skilled labor abounds, and accessible at all seasons of the year by its freedom from ice of sufficient thickness to obstruct its free navigation, its claims to favorable consideration assert themselves, and require no argument to make them manifest. The importance of the harbor of Norfolk cannot be overestimated either in a national or commercial regard.

Left helpless and prostrate from the effects of the war, with its commerce, its industries, and its wealth almost annihilated, Norfolk is to-day one of the principal cotton marts of the world, and with its railroad connections extending landward in every direction, its unrivaled situation, its splendid lines of steamers to Europe, New York, Boston, Providence, Baltimore, and Richmond, and its steam connections with Philadelphia and coastwise in almost every direction, together with an inland communication by means of the Chesapeake and Albemarle Canal almost continuous to the Gulf of Mexico, all combine to make it a most important point for the interchange of the manufactures and products of the North and of the Old World with the virgin yield of the South and West.

In our recommendation for the improvement of the harbor and its approaches, we have not merely considered the necessities of the present, important as they are, but also have endeavored to submit a plan which will meet the requirements of the future, when the whole country, which is now but in a chrysalis condition, shall be fairly peopled, and the fruitful territories of the South and West measurably developed.

I have the honor to submit in this connection a copy of the third report of our advisory board in duplicate.

Very respectfully,

T. H. STEVENS,
Commodore, U. S. N., Chairman U. S. Advisory Board to Harbor Commissioners of Norfolk and Portsmouth.

Hon. GEO. W. MCCRARY,
Secretary of War.

REPORT OF THE UNITED STATES ADVISORY BOARD.

WASHINGTON, D. C., *May* 6, 1878.

DEAR SIR: In our report of January, 1877, we recommended the deepening below the mouth of the Southern Branch and upon the margin of the Portsmouth Flats as projects of improvement to be undertaken subsequent to the removal of shallow ground in the approaches to the harbor, but postponed further remarks upon this last-named project with the hope that our inquiries into the history of those outer shoals would assist us in forming a proper judgment as to the width of channel that could be used and maintained most economically. We have not been as successful in these inquiries as we had hoped, but we have decided to make the following recommendations, viz:

1st. That the outer bar opposite and above Sewall's Point should be deepened to 25 feet at mean low-water for a distance of 8,400 feet and a width of 500 feet, including slopes of repose. To accomplish this, the gross amount of dredging required would be 400,000 cubic yards, with an average cut of something less than 1 yard and a maximum cut of $1\frac{1}{3}$ yards.

2d. That the bar opposite the mouth of Western Branch should be deepened to 25 feet at mean low water for a distance of 4,800 feet and a width of 500 feet, including slopes of repose. The dredging would here amount to 300,000 cubic yards, the average cut being $1\frac{1}{10}$ yard and the maximum cut $1\frac{8}{10}$ yards.

Very respectfully,

T. H. STEVENS.
Commodore, U. S. N., Chairman of U. S. Advisory Board to Harbor Commissioners of Norfolk and Portsmouth.
CHAS. B. PHILLIPS,
Captain of Engineers,
HENRY MITCHELL,
U. S. Coast Survey,
Members of U. S. Advisory Board, &c., &c., &c.

CHARLES REID, Esq.,
President State Harbor Commission of Norfolk and Portsmouth, Va.

EEPORT OF MR. S. T. ABERT, UNITED STATES CIVIL ENGINEER.

UNITED STATES ENGINEER OFFICE,
Washington, D. C., May 16, 1878.

GENERAL: I have the honor to acknowledge the receipt of your letter of the 10th instant, referring the third report of United States Advisory Board to the harbor commissioners of Norfolk and Portsmouth, relative to a plan for the improvement of the harbor of Norfolk, for report and estimate, in connection with the improvement now in progress, and would respectfully submit the following report:

The advisory board have submitted three reports in relation to the establishment of port-warden lines within the harbor of Norfolk and to the improvement of the harbor and the channel to Hampton Roads.

The first two reports were referred to me by your letter of March 17, 1877, and were returned with my report June 5, 1877. These reports relate to the port-warden lines and the dredging required to make

these lines available for the purposes of trade. This third and final report relates wholly to the dredging required to obtain a channel 500 feet wide and 25 feet deep at low water from Hampton Roads to the city of Norfolk and to the Portsmouth navy-yard.

The consideration of the port-warden lines does not come within the purview of this communication, and may safely be left with the intelligent officers who compose the board and with the harbor commissioners, with whom remains the power to accept or to modify or reject the lines proposed, and to establish regulations for the government of the riparian owners in erecting docks and wharves.

This right can be exercised so long as the docks, wharves, and pierheads do not obstruct the public highway.

My comments will therefore be confined to the improvements recommended, which differ slightly from those mentioned in the Reports of the Chief of Engineers. In part II, page 147, of the Report for 1875, it is stated in regard to that part of the improvement along the Portsmouth flats, that "it would be necessary to rectify the wharf-front of the city of Portsmouth, commencing at the northern point and extending 1,200 feet above, pushing the entire front back until at the northern point it will be about 300 feet in the rear of its present position. The line should then be continued by dredging from the point of the wharf to the 25-foot curve of depth, turning on a gentle curvature to the left hand. Between this line and the channel the material should be dredged to a depth of 20 feet. These operations involve an interference with riparian rights and require a large amount of dredging. I regard them, however, as essential parts of any plan for the connection of all the forces which co-operate to form the bar."

The advisory board propose to push back the wharf front 110 feet instead of 300 feet, and to dredge to 25 feet instead of 20, increasing the depth but reducing the width of this part of the channel. Neither of these propositions for removing the wharf front can be carried out without the consent of the riparian owners. I have been credibly informed, however, that their consent can be obtained, but no estimate can be made of this part of the work without further examination and consultation.

In the Report of the Chief of Engineers for 1877, part I, page 364, it is also stated that "In order to carry 25 feet from Hampton Roads up to the city of Norfolk, it will be necessary to dredge the channel between the Hospital light and Sewall's Point, so as to give a width of 400 feet and a low-water depth of 25 feet."

The advisory board recommend that the channel should be made 500 feet wide, including slopes of repose.

In the following estimate the dimensions proposed by the board have been adopted, and the work already done in removing the bar at the mouth of the Eastern Branch, as well as the amount asked in the last annual report to complete the removal, have been deducted from the total.

I would call attention to the fact that in order to give a clear depth of 25 feet at low water it will be necessary to dredge to a depth of 26 feet, and that the quantity measured in *situ* must be increased at least 15 per cent. in order to make it equivalent to the same quantity measured in the dumping scows. I have adopted this equivalence as the result of practical observation in the recent dredging within the harbor of Norfolk. I would further remark that the material to be dredged has been assumed to be of the same character as that removed from the Eastern Branch bar.

The estimate is given under two heads, viz: within the harbor of Norfolk, and from Hampton Roads to Norfolk Harbor.

ESTIMATES.

(1.) *Within the harbor of Norfolk.*

The dredging is the amount recommended by the board, and extends to the port-warden lines.

680,000 cubic yards dredging, at 15c	$102,000
Contingencies, 10 per cent	10,200
Total	112,200

(2.) *From Hampton Roads to Norfolk and the Portsmouth navy-yard.*

Channel 500 feet wide, 26 feet deep, at low water. The approximate amount of dredging would be—

At Sewall's Point	617,000	cubic yards
Opposite Western Branch	552,000	"
Shoal at buoy 12	78,000	"
Total dredging	1,247,000	"

The estimated cost will be as follows:

1,247,000 cubic yards dredging, at 15c	$187,050
Contingencies, 10 per cent	18,705
Total	205,755

SUMMARY.

(1.) In the harbor proper	$112,200
(2.) Between Norfolk and Hampton Roads	205,755
Total estimate	317,955

The general location of the proposed channel is shown on the accompanying tracing.

When this work is completed there will be a 25-foot channel at low water from Hampton Roads to the city of Norfolk and Portsmouth navy-yard, and Norfolk harbor will become a shipping port of the first class.

An opinion regarding the causes of the deterioration of the channel could hardly be expressed without further examination.

The commercial importance of the harbor of Norfolk is too well known to need further commendation.

The letter of Commodore Stevens, with the report of the advisory board, is herewith respectfully returned.

Very respectfully, your obedient servant,

S. T. ABERT,
United States Civil Engineer.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers, U. S. A.

Norfolk Harbor and approaches

Showing proposed improvements

To accompany letter of May 15 1878, to Chief of Engineers

Scale $\frac{1}{40,000}$

Statute miles 1 ¾ ½ ¼ 0 1 2

Nautical miles 1 ¾ ½ ¼ 0 1 2

Soundings are expressed in feet and refer to mean low water

The 18 foot curve is shown thus

" 12 " " " "

" 6 " " " "

Proposed improvements

Completed

Port Warden lines

T. J. Abert
U.S. Engr

S. Ex. Doc. No. 88.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC No. 89.

LETTER

FROM

THE SECRETARY OF THE NAVY,

TRANSMITTING

In answer to a Senate resolution of April 16, 1878, *copies of the record of proceedings of the Naval Examining Board in the case of Capt. Somerville Nicholson, United States Navy, for promotion.*

MAY 28, 1878.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, May 27, 1878.

SIR: In compliance with the Senate resolution dated the 16th ultimo, I have the honor to transmit herewith copies of the records of examination in the case of Capt. Somerville Nicholson, United States Navy.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States.

RECORD OF PROCEEDINGS OF THE NAVAL EXAMINING BOARD, CONVENED AT THE NAVY DEPARTMENT, WASHINGTON, D. C., IN CASE OF CAPT. SOMERVILLE NICHOLSON, UNITED STATES NAVY, OCTOBER 16, NOVEMBER 8, 9, 13, 14, 15, AND 20, 1877.

NAVAL SOLICITOR'S OFFICE,
November 30, 1877.

These proceedings are correct in form and substance, but the Board are not unanimous, a majority only finding that Captain Nicholson has failed, &c. The solicitor submits herewith a special report, which is attached to the next leaf of this record.

JOHN A. BOLLES,
Naval Solicitor.

EXECUTIVE MANSION, *February* 12, 1878.

The finding of the Board in this case is disapproved.

R. B. HAYES.

Report of Naval Solicitor on examination of Capt. Somerville Nicholson, United States Navy:

NAVY DEPARTMENT, NAVAL SOLICITOR'S OFFICE,
Washington, November 30, 1877.

Captain Nicholson has been examined for promotion by both of the Boards named in sections 1493 and 1497. Only one of those Boards recommends him for promotion.

Under section 1447 of the Revised Statutes, he must now be retired, unless the President non-concur with the Examining Board, which finds Captain Nicholson morally unfit for promotion, and by sending the case back for reconsideration, or by sending it to a new board, shall obtain a report in which he can concur.

Will the President approve the present finding of the Board, and order Captain Nicholson to be retired, or will he disapprove that finding and send the proceedings back for reconsideration, or refer the case to a new Board?

To answer these questions intelligently involves an inquiry into the evidence which led this Board to regard Captain Nicholson as morally unfit for promotion. That evidence may bring the mind of the President to the same unfavorable opinion; or may convince him that neither this Board, nor any other, will report favorably on the case.

What was the evidence before the Board?

1st. The Board had before it the record of proceedings of a court-martial (No. 5642), which, in March, 1874, convicted Captain Nicholson of drunkenness in December, 1873, and in January and February, 1874, while in command of the Lancaster, sentenced him to ten years on furlough, with loss of rank during that time. As Captain Nicholson was then over fifty-two years of age, and must go upon the retired list at the age of sixty-two, this sentence was equivalent to perpetual dismissal from the active list of the Navy.

But that sentence, though approved, was mitigated, and in consequence of that mitigation, Captain Nicholson became entitled to promotion, in due course, *provided*, the two Boards and the President should concur in the opinion of his fitness for promotion.

Since the conviction in 1874, Captain Nicholson has not been intrusted with the command of any vessel, nor been assigned to active duty.

A careful study of the evidence which led to this conviction has convinced the naval solicitor that the court could not, upon that evidence, have acquitted Captain Nicholson.

2d. The Examining Board had before it the testimony of Rear Admirals John Rogers and A. L. Case, and of Commodores Cooper, Rhind, Ransom, and Spicer, all of whom speak of Captain Nicholson's habits, or reputation, or both, as bad in regard to intemperance. None of them have known what his habits have been since his conviction in 1874. None of them express the opinion that he is morally fit for promotion, and none would be willing to send him on important service in command of a vessel.

3d. To prove his fitness morally, Captain Nicholson introduced both written and oral testimony. His written evidence consisted of the statements of Rear-Admiral Strong, who says he has had the reputation of being dissipated; of Rear-Admiral Murray, who has seen him under the influence of liquor, but does "not think him disqualified"; of Commodore Stevens, who, being asked if he has reason to believe that Captain Nicholson is given to habits of intemperance, says "not from my official association with him"; of Commodore F. A. Parker, who says

"rumor says his character as an officer is injured by habits of intemperance"; of Commodore John Guest, who says "I do not consider that he has habits which disqualify him for promotion. In social life he is a free liver"; of Medical Inspector Hord, who sailed with him in the Lancaster in 1873–'74, and lived near him in Georgetown in 1874–'75, and never saw him intoxicated; and of Chaplain Rose, who was with him in the Lancaster, but never saw any bad habit, though he heard much conflicting evidence as to his "habits for intemperance."

Captain Nicholson's oral testimony, produced before the Board, related to his habits during the time since his conviction, and comes from his Washington and Georgetown neighbors, none of these witnesses being in the naval service. These witnesses are W. W. Corcoran (an uncle of Captain Nicholson by marriage), Henry D. Cooke, General George C. Thomas, General W. D. Whipple, and General L. H. Pelouze, all of whom have seen Captain Nicholson often and intimately during the last four years, and speak of his habits as perfectly sober so far as they have seen during that period.

This is the evidence now submitted to the President.

Upon this evidence Captain Nicholson thinks and argues that, although it be proved that he was intemperate prior to his conviction and suspension, yet, if his neighbors for the last four years bear witness to his sobriety, he ought to be regarded as fit for promotion now.

The practical question in this case is this, viz, Will the President consider a captain worthy of promotion when, in 1873 and 1874, being in command of a ship of war, was four times so much intoxicated as to be unfit for duty, but who has been sober and out of active service ever since; and will the President expect this Board to change its opinion on reconsideration of this case, or another Board to make a finding different from this?

Unless this Board change its opinion, or another Board come to a different opinion, Captain Nicholson, under section 1447 Revised Statutes, must be retired.

To the Solicitor, it does not seem probable that this Board will vary its finding, or that another Board would, on the same evidence, recommend for promotion.

JOHN A. BOLLES,
Naval Solicitor.

NAVAL EXAMINING BOARD.
Washington, October 16, 1877.

The Board met this day at 10½ o'clock a. m., pursuant to the adjournment of yesterday.

Present: Vice-Admiral S. C. Rowan, President; Commodore G. B. Balch, Commodore C. H. Baldwin, members; and James C. Dulin, Recorder.

A copy of the order of the Secretary of the Navy convening the Board is hereto appended and marked A.

The record of the proceedings of yesterday was read and approved.

Capt. Somerville Nicholson, United States Navy, appeared before the Board as a candidate for examination for promotion, in obedience to an order, a copy of which is hereto appended and marked B.

The Board then proceeded to take up the examination in the case.

The order convening the Board was read aloud by the Recorder in the presence and hearing of the candidate.

The President of the Board then swore the Recorder to the faithful performance of his duty as Recorder.

The Recorder then swore the members of the Board faithfully and impartially to examine and report upon the candidate about to be examined.

The Board having by vote on the 1st October last designated Rear-Admirals John Rodgers, A. L. Case, and Commodores J. W. A. Nicholson, G. H. Cooper, A. C. Rhind, G. M. Ransom, and W. F. Spicer, United States Navy, to whom interrogatories shall be forwarded in the case of Captain Nicholson and those officers having duly answered and returned to the Board said interrogatories, they were read in evidence and are annexed to this record, and marked respectively C, D, E, F, G, H, I.

At the conclusion of the reading of the interrogatories and answers in the case, Captain Nicholson requested time in which to prepare and submit to the Board additional names of officers to whom he desired interrogatories addressed in his case.

The Board, after consideration, granted Captain Nicholson's request; and that officer thereupon prepared and submitted to the President of the Board a letter, requesting that interrogatories be sent to the following officers, viz: Rear-Admirals J. H. Strong, Alexander Murray, Commodores Foxhall A. Parker, Thomas H. Stevens, and John Guest, Medical Inspector W. T. Hord, and Chaplain F. B. Rose, United States Navy.

The letter of request of Captain Nicholson is hereto appended and marked J.

The Board then directed interrogatories to be addressed to the officers named, and it thereupon suspended further proceedings in the case until such time as answers to the interrogatories of the Board will have been received.

NAVAL EXAMINING BOARD,
Washington, November 8, 1877.

The Board met this day at 11 o'clock a. m., pursuant to the adjournment of yesterday.

Present: All the members of the Board and the Recorder.

Captain Somerville Nicholson, United States Navy, was also present.

The answers of officers to the interrogatories addressed to them by the Board, as requested by Captain Nicholson, having been received, the Board resumed consideration of that officer's case.

The interrogatories of the Board and answers thereto of officers were read in evidence, and are annexed hereto, and marked K, L, M, N, O, P, and Q.

The Board then proceeded with the professional examination in the case.

Captain Nicholson was examined in international law, fleet tactics, and duties of the next higher grade, and found professionally qualified for promotion.

The Board then considered the testimony in the case.

Captain Nicholson submitted a written communication to the Board, requesting that certain gentlemen, residents of the District of Columbia, be summoned to testify to his character as an officer and gentleman for the last four years.

The Board was then cleared, and, after full consideration, decided to grant Captain Nicholson's request.

The written communication is hereto appended, and marked R.

Captain Nicholson stated to the Board that it would not be necessary to issue formal summons on the gentlemen requested to appear as witnesses in his case, as he would request them to be present at the proper time.

A Board of Medical Examiners having examined and pronounced Captain Nicholson physically qualified to perform all his duties at sea, the report of that Board was received and read aloud, and hereto annexed, and marked B. M. E.

A record of service of Captain Nicholson since appointment as acting midshipman, 21st June, 1839, having been submitted to the Board by him, and it being duly sworn to, was read in evidence, and marked Exhibit S. N.

The Board then postponed the further consideration of the case until to-morrow, the 9th instant, at 11 o'clock a. m., to which time it then adjourned.

NAVAL EXAMINING BOARD,
Washington, November 9, 1877.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

Capt. Somerville Nicholson was also present.

The record of the proceedings of the Board of October 16 and of 8th instant, in the case of Captain Nicholson, was read and approved. The Board then resumed consideration of the case.

Mr. W. W. CORCORAN, being present, was called as a witness in the case, and, being duly sworn, testified as follows:

Question. Please state your name and residence.

Answer. W. W. Corcoran, Washington, D. C.

Question. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.

Answer. I have known Captain Nicholson about twenty-five years. He married my niece. An intimacy between us during that time, has given me opportunities of judging of his character.

Question. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?

Answer. I would say that for the last four or five years Captain Nicholson has come under my personal observation. I have generally seen him, as often as four or five times a week, at my house; and his conduct has been highly commendable. I have never seen him, in the slightest degree, under the influence of liquor; and he has shown no evidence whatever that he has habits of intemperance.

There being no further questions to ask the witness, the testimony was then read over to him, and by him pronounced correct as recorded.

Hon. H. D. COOKE was then called as a witness, and that gentleman appearing, was duly sworn, and testified as follows:

Question. Please state your name and residence.

Answer. H. D. Cooke, Georgetown, D. C.

Question. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.

Answer. I have known Captain Nicholson six or seven years; about the last four years of which time, he has lived next door to me in Georgetown. I have seen him daily, and there has been a good deal of intercourse between our families and ourselves.

Question. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?

Answer. From personal knowledge I do not. On the contrary, all that I know of him will justify my opinion that his habits are exemplary and unexceptionable in that particular.

The testimony of the witness being concluded, was then read over to him, and by him pronounced correct.

General GEORGE C. THOMAS, being present, was next called as a witness, and being duly sworn, testified as follows:

Question. Please state your name, rank, and residence.

Answer. George C. Thomas, major-general, commanding District of Columbia. I have been connected with the War Department and the Army forty-five years, and am a graduate of West Point, and reside in Georgetown, D. C.

Question. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.

Answer. I have known Captain Nicholson upwards of thirty years, and have had every opportunity of judging of his character during the whole time, and especially the last four years as neighbors and frequent visitors in Georgetown.

Question. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?

Answer. Not in the least.

There being no further questions to ask the witness, his testimony as recorded was then read over to him, and by him pronounced correct.

General W. D. WHIPPLE, being called, appeared as a witness in the case, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and present duty.

Answer. W. D. Whipple; colonel and aid-de-camp United States Army, and brevet major-general; on duty at headquarters.

Question. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.

Answer. I have known Captain Nicholson about three years. I live near him in Georgetown; have frequently met him at his own house and at my house, and elsewhere about town.

Question. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?

Answer. From my personal knowledge, I consider that he has not habits that unfit him for promotion or for the position of commodore in the Navy.

The testimony of General Whipple being concluded, it was read over to him, and by him pronounced correct.

General L. H. PELOUZE was next called as a witness, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and present duty.

Answer. Louis H. Pelouze; major and assistant adjutant-general United States Army; and at present on duty in the War Department.

Question. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.

Answer. I have known Captain Nicholson since some time in the fall of 1876. We have met frequently in Georgetown and in this city.

Question. From your personal knowledge do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?

Answer. From my personal knowledge he has not such habits.

The testimony of the witness being concluded, was read over to him, and by him pronounced correct as recorded.

The Board being cleared, Captain Nicholson then requested permission to prepare and submit to the Board a written statement in reply to certain testimony of officers in his case, and that he be allowed until Monday next to make such statement.

The Board granted the request of Captain Nicholson, and postponed the further consideration of his case until Tuesday next, the 13th instant, at 11 o'clock a. m., to which time it then adjourned.

NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

Captain Nicholson was also present.

The record of the proceedings of the 9th instant was read and approved.

The Board then resumed consideration of the case of Captain Nicholson.

The written statement of Captain Nicholson, in answer to certain testimony of officers in his case, was then read aloud by him, and, being duly sworn to, was received in evidence, and is annexed to this record and marked S.

The Board considered the sworn statement of Captain Nicholson, and after consideration took up the case of Master J. W. Graydon, U. S. N., who appeared before the Board for examination for promotion, in obedience to an order.

The Board then adjourned to meet at 11 o'clock a. m. to-morrow.

NAVAL EXAMINING BOARD,
Washington, November 14, 1877.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

The record of the proceedings of yesterday was read and approved.

The Board having completed the examination in the case of Master Graydon, and having received, from the files of the department, record of the proceedings of a naval general court-martial convened on board the United States steamer Congress, Key West, Fla., in the case of Captain Nicholson, and also record of the proceedings of a naval board of inquiry held on board the United States steamer Benicia, Asiatic squadron, under date 13th September, 1870, the Recorder of the Board was

directed to inform Captain Nicholson that, under section 1499 of the Revised Statutes, certain documentary matter furnished the Board from the files of the department would be considered in connection with his examination for promotion, and to notify that officer to appear before the Board without delay.

A copy of the letter of the President of the Board requesting official papers on file in the case of Captain Nicholson, the letter of the department in answer thereto; and also the letter of notice of the Board to Captain Nicholson to appear, are annexed to this record and marked T, U, and V.

The Board then examined the aforesaid records, and Captain Nicholson not appearing, it adjourned to meet at 10½ o'clock a. m. to-morrow, the 15th instant.

NAVAL EXAMINING BOARD,
November 15, 1877.

The Board met pursuant to adjournment.
Present, all the members and the recorder.
Captain Nicholson was also present.
The record of the proceedings of yesterday was read and approved.
The Board then resumed consideration of the case of Captain Nicholson.

Captain Nicholson submitted to the Board a written statement in which that officer asks ample time may be given him to thoroughly examine all the documentary matter before it, and requests that he may be allowed until 1 p. m. on Monday next to prepare and present a statement in reply thereto.

The statement was received and considered, and is appended hereto and marked W.

The Board granted Captain Nicholson's request and gave him permission to examine the documentary matter before it, and thereupon adjourned until Tuesday next, the 20th instant, at 11 o'clock a. m.

NAVAL EXAMINING BOARD,
Washington, November 20, 1877.

The Board met pursuant to adjournment.
Present, all the members, the recorder, and Capt. S. Nicholson.
The record of the proceedings of the 15th instant was read and approved.

Captain Nicholson then read aloud a written statement prepared by him, in answer to the documentary matter furnished the Board from the files of the department. The statement of Captain Nicholson, being sworn to, was received in evidence, and is annexed hereto and marked X.

The president of the Board then discharged Captain Nicholson from further attendance upon the Board.

The Board then proceeded to deliberate upon the evidence in the case hereto annexed and marked as aforesaid, and also upon the professional examination herein stated, and decided thereon that Captain Nicholson possesses in a high degree the mental and professional qualifications to perform efficiently all the duties of a naval officer at seal in the next higher grade.

The Board further find that Captain Nicholson has failed to establish his moral fitness to the satisfaction of the Board; and we do not therefore recommend him for promotion.

S. C. ROWAN,
Vice-Admiral and President.
GEORGE B. BALCH,
Commodore.

Minority report.

While concurring with the majority of the Board as to the mental and professional of Captain Nicholson, I am of opinion that the evidence in the case establishes that officer's moral fitness, and do therefore recommend him for promotion.

C. H. BALDWIN,
Commodore.

The record of the proceedings of a naval general court-martial and the record of a naval court of inquiry in the case of Captain Nicholson, furnished the Board from the files of the department, are returned with this record to the department.

JAMES C. DULIN,
Recorder.

A.

NAVY DEPARTMENT,
Washington, October 13, 1877.

SIR: A Naval Examining Board for the examination of such officers as may be notified to appear before it as candidates for promotion is hereby ordered to convene at this department on Thursday, the 15th day of October instant, at noon.

The Board will consist of yourself, as senior member and President, and of Commodores G. B. Balch and C. H. Baldwin, as members. Mr. James C. Dulin will act as Recorder.

The Board will be organized anew in each case, as follows, viz: The senior member will swear the Recorder to the faithful performance of his duty as Recorder. The Recorder will then swear the members of the Board faithfully and impartially to examine and report upon the candidate about to be examined.

A copy of this order, and of all orders addressed by the department to any member of the Board, or to the Recorder, and also the original, or a copy, of every record or paper used in the case for any purpose, must be attached to the record of that case.

No fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into, or considered, in any case, and the record must show, as fully as may be practicable, everything which assisted the Board in forming its opinion.

The Board will by vote designate the officers to whom interrogatories shall, in any case, be forwarded for answers as to the mental, moral, or professional fitness for promotion of the candidate.

No such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank.

Such witnesses as the candidate may reasonably request to have ex-

amined upon written interrogatories, or orally, under oath, administered by the senior member, shall be examined. Whenever such request is, by the Board, deemed unreasonable, it shall be at once referred to the Secretary of the Navy for decision.

Each record must be signed by every member, and by the Recorder, and must show who of the members concurred in, and who, if any, dissented from, the opinion of the Board.

Whenever the Board fails to recommend a candidate for promotion, the record will state whether such failure is owing to his moral, mental, or professional unfitness for promotion.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Vice-Admiral S. C. ROWAN,
Washington, D. C.

A copy.
JAMES C. DULIN, *Recorder.*

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, 15th, 1877.

SIR: Report to Vice-Admiral Rowan on the 16th instant, for the required examinations, preliminary to promotion, by a Board of which he is President.

By direction of the Secretary.

Respectfully,

DANL. AMMEN,
Chief of Bureau.

Capt. SOMERVILLE NICHOLSON, U. S. N.,
Georgetown, D. C.

A true copy.
JAMES C. DULIN, *Recorder.*

C.

Interrogatories addressed to Rear-Admiral John Rodgers, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. He served a short time under my command, he being captain of the Benicia and I commanding-in-chief on board the Colorado.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I do not know of any personally, but I believe he [is] reputed an intemperate man.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I think he is professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Aside from reputed intemperance, I think it is good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Aside from reputed intemperance, I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Aside from reputed intemperance, I do so consider him.

JOHN RODGERS,
Rear-Admiral, United States Navy.

Witnesses:

GEO. W. PIGMAN, *Lieutenant-Commander.*
GEORGE E. IDE, *Lieutenant.*

D.

Interrogatories addressed to Rear-Admiral A. Ludlow Case, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. Somerville Nicholson?

Answer. Many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Yes; in the combined fleet under my command at Key West, 1874, in command of the Lancaster; was obliged to relieve him in the command for intemperance.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have reason "to believe him given to habits of intemperance" at times.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your

knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. No, for the reasons stated in Nos. 2 and 3.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Yes, with the exceptions stated in Nos. 2 and 3.

A. LUDLOW CASE,
Rear-Admiral, United States Navy.

Subscribed and sworn before me this 6th day of October, 1877.

D. A. LISK,
Notary Public.

E.

Interrogatories addressed to Commodore J. W. A. Nicholson, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. About thirty-five years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Year 1842; Mediterranean Squadron; as midshipmen together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Have seen him intoxicated more than once.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Cannot say, for I do not know.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, mor-

ally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Mentally and professionally, yes; morally, no.

J. W. A. NICHOLSON,
Commodore, United States Navy.

Signed in presence of—

WM. G. TEMPLE,
Captain, United States Navy.

C. S. COTTON,
Commander, United States Navy.

F.

Interrogatories addressed to Commodore Geo. H. Cooper, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since 1839.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Served in the Japan Squadron together, under Commodore M. C. Perry; was considered an efficient officer. We were lieutenants at the time. Have never served on board the same ship with him.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Am not sufficiently well acquainted with him to express an opinion, as upward of thirty years have elapsed since we were in Japan. Since then I have seen him but seldom.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. As above.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. As above.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. As above.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. As above.

G. H. COOPER,
Commodore, United States Navy.

Sworn to before me the 3d day of October, 1877.

HENRY W. ROZELL,
Notary Public.

G.

Interrogatories addressed to Commodore A. C. Rhind, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Over thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Do not remember, except that we were together as midshipmen at the Naval School at Philadelphia, and met at Key West in 1874, he being in command of the Lancaster.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I know that Captain Nicholson has at times overindulged in wine or spirits, but do not believe him to be habitually intemperate.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Aswer. I consider him professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. I believe it good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I could not decide that question until the occasion arose.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

A. I do, with the exception of his occasional overindulgence in wine or spirits, and in that matter as much qualified as some others who have passed the ordeal of examination.

A. C. RHIND, *Commodore.*

H.

Interrogatories addressed to Commodore George M. Ransom, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. Somerville Nicholson?

Answer. About thirty-three years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Served together in the North Atlantic Squadron several months in 1864, he in command of the United States steamer State of Georgia, and again several months in the North Atlantic Squadron in 1874, he in command of the United States steamer Lancaster, and did apparently perform his duties in an efficient manner.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have reason to believe, not from personal knowledge but only from common report, that he has been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion.

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Unexceptionable otherwise than his habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

A. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Mentally and professionally, I do. I know nothing against his moral character.

GEO. M. RAMSOM,
Commodore, United States Navy.

Witnesses:

R. H. WYMAN,
Commodore, United States Navy.

J. C. HOWELL,
Rear Admiral.

I.

Interrogatories addressed to William F. Spicer, commodore U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since 1844.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; did he perform his duty in an efficient manner?

Answer. We were in class together at the Naval School, Philadelphia. Never met on other service.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have reason to believe that he has been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Don't remember to have heard his general reputation discussed; so far as I know, a competent officer, and a gentleman.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. It would require some degree of association on duty to answer this question positively. If it rested solely on my idea of his intelligence and ability as an officer, I should not hesitate to so employ him.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Mentally and professionally, yes.

WM. F. SPICER,
Commodore United States Navy.

STATE OF MASSACHUSETTS,
City of Boston, County of Suffolk, ss:

On this sixth day of October then and there personally appeared William F. Spicer, to me personally known, and made oath that the matters therein set forth in the foregoing answers to the within interrogatories by him subscribed were true. Before me.

JAS. B. BELL,
Notary Public and Justice of the Peace.

J.

WASHINGTON, *October* 17, 1877.

SIR: I respectfully request that interrogatories may be sent to the following officers, viz: Rear-Admiral J. H. Strong, Newburg, N. Y.; Rear-Admiral A. Murray, San Francisco, Cal.; Commodore John Guest, Portsmouth, N. H.; Commodore Foxhall Parker, Chester, Pa.; Commodore Thomas H. Stevens, Norfolk; Medical Inspector W. T. Hord, Boston navy-yard; Chaplain F. B. Rose, United States steamer Pensacola.

Very respectfully,

S. NICHOLSON,
Captain United States Navy.

Vice-Admiral S. C. ROWAN,
President Examining Board.

K.

Interrogatories addressed to Rear-Admiral James H. Strong, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. Knew him first in 1842–'43.

No. 2. Has Capt. S. Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Yes, as my commander of my flagship, South American station for some three months. He performed his duty in a perfectly satisfactory manner.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Of my own knowledge I know nothing to unqualify him for promotion. I have never seen him intoxicated.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you or not consider him mentally qualified for promotion?

Answer. While under my command he performed his duties to my entire satisfaction.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. He has had the reputation of being dissipated, but I have never seen anything of it myself.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I have not been long enough associated with him on duty to be able to answer.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. So far as I personally know, he is. In my answers I have been governed solely by my personal knowledge and not by hearsay or reports.

J. H. STRONG,
Rear-Admiral United States Navy.

L.

Interrogatories addressed to Rear-Admiral Alexander Murray, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. About thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. North Atlantic squadron in command of gunboat. He performed his duty with efficiency and ability.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have seen him under the influence of liquor, but I do not think him disqualified.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Yes; I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. First rate.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Yes.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Yes.

A. MURRAY,
Rear-Admiral, United States Navy.

Witness:
J. H. SPOTTS, *Commodore.*
H. C. NELSON, *Surgeon.*

M.

Interrogatories addressed to Commodore Thomas H. Stevens, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. Since his childhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Captain Nicholson served with me when I commanded an expedition up the Pamunkey River, in May, 1862, to open the way for McClellan's advance to Richmond, and to protect a cavalry detachment near the White House. Captain Nicholson's services were of great value and most efficient. He commanded the Marblehead at the time and very ably.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. In my official association with Captain Nicholson, to which I presume these questions refer, my reply is in the negative to both interrogatories.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I consider Captain Nicholson, on the score of general intelligence and ability, one of the first officers in the Navy.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Captain Nicholson's professional attainments are of a high order, and fully qualify him for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. I know him to be a thoroughly competent and gallant officer, and an accomplished gentleman, and such is the estimate of his brother officers.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Yes; and would feel if the occasion were one of peril where nerve and dash were essentially required, it could not be in better hands.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Yes.

T. H. STEVENS,
Commodore, United States Navy.

Witness:
GEO. R. BOUSH,
Naval Constructor, U. S. N.
W. A. H. ALLEN,
Passed Assistant Engineer, U. S. N.

N.

Interrogatories addressed to Commodore Foxhall A. Parker, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. Since our boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. We served together about two months in the Bay of Florida in 1873, he in command of the Lancaster, I as "chief of staff of the united fleets" commanded by Rear-Admiral Case. He performed his duties as a divisional commander remarkably well.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have no reason to believe him given to bad habits. He was tried on a charge of intoxication aboard the Lancaster, but I have never heard the result of the trial.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I consider him professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. He is considered a thorough gentleman. Rumor says his character as an officer is injured by habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. As far as my own personal knowledge of him goes, yes.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. As far as my own personal knowledge of him goes, yes.

FOXHALL A. PARKER,
Commodore, United States Navy.

Witnesses:

E. Y. McCAULEY,
Captain, United States Navy.

B. B. TAYLOR,
Commander, United States Navy.

O.

Interrogatories addressed to Commodore John Guest, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. From boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. In China and Japan, under Commodore Perry; in the same squadron, but not in the same vessel. He was distinguished for efficiency.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I do not consider that he has habits which disqualify him from promotion. In social life he is a free liver.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Decidedly, yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Eminently so.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?

Answer. Excellent; of high tone.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would; with perfect confidence.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do.

JOHN GUEST,
Commodore, United States Navy.

Witnesses:

EARL ENGLISH,
Captain, United States Navy.

HENRY ERBEN,
Commander, United States Navy.

P.

Interrogatories addressed to Medical-Inspector William T. Hord, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the honorable Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. Since 1873.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity.

Answer. In 1873, on the Brazil station, and as captain of the Lancaster.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I know of no habits which disqualify him for promotion. I never saw him intoxicated while on board ship. Subsequent to sailing with him I met him nearly every day for two years, at Georgetown, where we both resided, and never knew him to be intoxicated.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Excellent.

No. 8. Do you or not consider Captain Nicholson to be mentally and morally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do.

WM. T. HORD,
Medical Inspector, United States Navy.

Witnesses:
FRANCIS H. SWAN,
Paymaster, United States Navy.
D. DICKINSON,
Passed Assistant Surgeon, U. S. N.

Q.

Interrogatories addressed to Chaplain Frank B. Rose, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the honorable Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. I first met him in the year 1873.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity.

Answer. Yes; in the year 1873, from Rio de Janeiro to the United States. Captain Nicholson commanded the United States ship Lancaster (2d rate) at that time.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. In my personal association with him I observed no habits that were not praiseworthy. I have heard a large amount of diametrically opposite testimony on the subject of his habits for temperance, and cannot sift the chaff from the wheat so as to form a safe judgment.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. No one can question the intelligence of Captain Nicholson. He is a remarkably clear-headed officer. I judge him to be mentally as qualified for commodore as he is for the position of captain.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. I have never heard any one deny that Captain Nicholson was a perfect gentleman. My acquaintance with his acquaintances is too limited to enable me wisely to declare his general reputation as an officer.

No. 8. Do you or not consider Captain Nicholson to be mentally and morally a fit officer to perform all his duties at sea in a higher grade?

Answer. As I have said in answer to fourth interrogatory, I do consider him to be mentally qualified. Upon the subject of moral qualification my answer would be the same but for conflicting testimony I have

heard upon the subject of his habits of intemperance. I cannot more fully answer the question.

FRANK B. ROSE,
Chaplain, United States Navy.

Witnesses:
H. C. NELSON,
Surgeon, United States Navy.
W. S. STAMM,
Chief Engineer, United States Navy.

R.

WASHINGTON, D. C., *November* 8, 1877.

SIR: Understanding that the present as well as the late Secretary of the Navy have decided that character subsequent to acts alleged to have been committed must be given due weight before an officer can be adjudged unfitted for promotion to a higher grade, I respectfully request that the following-named gentlemen, residents of this District, may be summoned to testify to my character as an officer and a gentleman for the last four years: Ex-Governor H. D. Cooke, Georgetown, D. C.; General George C. Thomas, Georgetown, D. C.; Judge John J. Key, Georgetown, D. C.; Maj. Gen. William D. Whipple, U. S. A., Washington, D. C.; General L. H. Pelouze, U. S. A., Washington, D. C.; W. W. Corcoran, esq., Dr. J. G. Blake.

Very respectfully, your obedient servant,

S. NICHOLSON,
Captain, United States Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,
President Naval Board of Examiners, Washington, D. C.

B. M. E.

NAVY DEPARTMENT,
Washington, D. C., October 16, 1877.

SIR: We have examined Somerville Nicholson, captain, United States Navy, and find him physically qualified to perform all his duties at sea.

Respectfully,

THOMAS J. TURNER,
Medical Inspector, United States Navy.
RICHARD C. DEAN,
Medical Inspector, United States Navy.
B. F. GIBBS,
Medical Inspector, United States Navy.

Hon. R. W. THOMPSON,
Secretary of the Navy.

Respectfully referred to the Board of Examiners by direction of the Secretary.

JNO. W. HOGG,
Chief Clerk.

A.

NAVY DEPARTMENT,
Washington, October 15, 1877.

SIR: A Board of Medical Examiners to determine the physical qualifications of such officers as may, by the Secretary of the Navy, be notified to appear before it as candidates for promotion, is hereby ordered to convene at this department on Monday, the 15th day of October, instant, at noon.

The Board will consist of yourself, as senior member and President, and of Medical Inspectors R. C. Dean and B. F. Gibbs as members.

The result of the examination in each case will be reported, separately, to the Secretary of the Navy.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Medical Inspector THOMAS J. TURNER, U. S. N.,
Washington, D. C.

A true copy:
T. J. TURNER,
Medical Inspector, United States Navy.

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, October 16, 1877.

SIR: The Board of Medical Examiners, of which you are President, will take up the case of Capt. Somerville Nicholson, as to his physical qualifications to perform all his duties at sea.

By direction of the Secretary.

Respectfully,

DAN'L AMMEN,
Chief of Bureau.

Medical Inspector THOMAS J. TURNER, U. S. N.,
Navy Department.

Received October 16, 1877.

C.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT,
Washington, D. C., October 16, 1877.

I hereby certify on honor that I am, to the best of my knowledge and belief, free from all bodily ailments; that I am physically qualified to perform all the duties of a naval officer at sea.

S. NICHOLSON,
Captain, United States Navy.

S. N.

Record of service of Capt. S. Nicholson, U. S. N.

June 21, 1839.—Appointed acting midshipman.

July 9, 1839, *to July* 31, 1842.—Served on board the United States frigate Brandywine, Mediterranean.

February 1, 1843, *to January* 29, 1844.—Served on board United States brig Truxton, bringing the remains of Commodore D. D. Porter from Constantinople to the United States.

March 11, 1844, *to April* 13, 1844.—On board the United States ship Princeton.

August 29, 1844.—Ordered to Naval School, Philadelphia.

May, 1845.—Passed my examination.

June, 1845, *to January* 21, 1848.—On Coast Survey duty.

January 21, 1848, *to June* 4, 1849.—Acting master on board United States ship Alleghany, Brazil and Mediterranean stations.

August 17, 1849, *to October* 8, 1852.—On Coast Survey duty.

October 8, 1852, *to April* 25, 1855.—Served as acting master and lieutenant on board the United States ships Powhatan and Mississippi, attached to Commodore Perry's Japan expedition.

May 5, 1854.—Commissioned lieutenant.

June 10, 1856, *to April* 30, 1857.—On ordnance duty, Washington navy-yard.

April 12, 1857, *to September* 3, 1859.—On board the United States ships Cumberland, African station.

October 29, 1859, *to December* 5, 1860.—On ordnance duty, Washington navy-yard.

December 5, 1860, *to January* 2, 1862.—On board United States ship Macedonian, Gulf of Mexico and home station.

January 10, 1862, *to December* 26, 1862.—In command of United States steamer Marblehead, co-operating with McClellan's army, York and Pamunky Rivers, and blockading duty off Charleston.

July 16, 1862.—Promoted to lieutenant-commander.

January 2, 1863.—Promoted to commander.

June 1, 1863 *to October* 20, 1863.—In command of iron-clad Sangamon, James River.

November 3, 1863, *to November* 9, 1864.—In command of United States steamer State of Georgia, on blockade duty off Wilmington.

November 9, 1864, *to July* 3, 1865.—In command of United States steamer Galatea, convoy duty, West Indies.

August 21, 1865, *to September* 27, 1866.—Special duty, Washington navy-yard.

September 27, 1866, *to October* 1, 1868.—As assistant to executive officer Washington navy-yard.

February 23, 1869, *to October* 31, 1869.—Member of Ordnance Board, Washington, D. C.

November 1, 1869, *to October* 9, 1870.—Command of United States steamer Benicia, Asiatic squadron.

April 6, 1871, *to December* 1, 1871.—Member of special board, Washington navy-yard.

August 15, 1873, *to February* 24, 1874.—In command of flag-ship Lancaster, South Atlantic station, and drill squadron, Florida Bay.

November 27, 1874.—Suspended from duty by sentence of court-martial for six years on furlough pay from April, 1874.

June 1, 1875.—Secretary of the Navy remitted that part of the sentence placing me on furlough pay.

October 3, 1876.—Secretary of the Navy revoked the unexpired portion of the sentence. Since the last date I have been unemployed.

My record thus shows that up to the time of my court-martial, I had been thirty-five years and two months in service. Seventeen years and eight months sea service; shore or other duty eleven years and eight months; unemployed five years and ten months.

Respectfully submitted.

S. NICHOLSON,
Captain United States Navy.

S.

WASHINGTON, D. C., *November* 13, 1877.

GENTLEMEN: Pursuant to the order of the Navy Department, I have appeared before your Board for promotion to the position of commodore, United States Navy, I being the senior captain on the active list, agreeably to the provisions of section 1496 Revised Statutes of the United States, which prescribes, before such promotion is made, the mental, moral, and professional fitness of the applicant to perform all his duties at sea shall be determined to the satisfaction of an examining board.

The order of the department pursuant to which you are acting prescribes that the members comprising this Board shall be duly sworn to faithfully and impartially examine and report upon the candidate for promotion.

2d. That no fact which occurred *prior* to his last examination for promotion must for any purpose be inquired into or considered.

3d. That no interrogatory or question to any witness shall, without the consent of the candidate, refer to a time *prior* to his last promotion.

4th. That the record as made by the Board, in relation to his case, must show everything as fully as may be practicable which assisted the Board in forming its opinion as to the fitness of the officer for promotion.

For a proper consideration of my case, I have thus referred to the law pursuant to which the Board has been organized, as also to the rules prescribed by the department for its action, and, as your functions are of a judicial character, it is alone, upon legal evidence presented, that my case is to be determined, and therefore, having the greatest confidence in the several members sitting in judgment upon my case, I feel every assurance that there will be no prejudice involved, and that no impression on the mind of either member of the Board, based upon unofficial statements made or the opinion of others heretofore expressed, will have the slightest weight in influencing their action, and that, by divesting their minds of any and all personal feelings, they will conclude my case alone upon the legal evidence submitted for their consideration.

With the exception of this, my statements under oath, the testimony in my case on the part of the government, and that presented by me, has been formally closed, and it is now for the Board to determine whether the evidence submitted does not prove that I am mentally, morally, and professionally fitted to perform all the duties at sea of a commodore in the United States Navy.

I have passed my *physical examination*, and desire to state in this con-

nection that my health was never in a better condition than now, and am as able to bear as much bodily labor and fatigue as at any period of my life. My *mental capacity* is unimpaired, and, I infer, is unquestioned by the Board, and, for my *professional attainments*, it is with pride that I refer to my record submitted for your consideration, in the belief that but few in the service have a more satisfactory one. As stated therein, I entered the service on the 21st of June, 1839, more than *thirty-eight years ago*, and have been on *active duty during that time nearly twenty-nine years, comprising seventeen years and eight months of sea-service and eleven years and three months of other service.*

In support of my moral character I refer with pleasure to the evidence submitted, feeling satisfied that the testimony of my brother officers, as well as that of prominent citizens who have known me for years, will establish the fact that my moral status is now an exemplary one, and which, with God's aid, I will keep unimpaired for all time.

As stated, having full confidence in the intelligence as well as impartiality of the Board, I would be willing to submit the testimony presented without comment, believing that the knowledge of the Board, as to the rules of evidence, would induce it to throw out such portions of the replies as are irrelevant, or which are based upon mere rumor, and without personal knowledge of the facts; but inasmuch as the statements are of record, I deem it important that reference should be made to them for the purpose of showing that they are inadmissible, and should not therefore be considered.

The evidence now before you is to be duly weighed and considered from a legal standpoint; and hence all that is hearsay is incompetent and inadmissible, inasmuch as it rests not upon the personal knowledge of the witness, but on the veracity and competency of some other person, from whom the witness may have received his information. See Benét on Military Law, page 251; which authority further states "that such evidence is very liable to be fallacious, from the facility with which it may have been imperfectly heard, or from having been misunderstood, or inaccurately remembered, or perhaps perverted, or possibly altogether fabricated." I will now proceed to analyze the evidence referred to.

1st. Replies of Rear-Admiral John Rodgers to the interrogatories propounded by the Board:

He states that I served a short time in his command, knows *nothing personally as to my habits*, but *believes I am reputed to be an intemperate man*, and that he considers me professionally qualified for promotion, aside from IMPUTED intemperance.

2d. Replies of Admiral A. L. Case:

Has known me many years, and that I was in command of the Lancaster, and served with him at Key West in 1874; that he was obliged to relieve me from command on account of intemperance, and that for the reasons stated I was not fitted for promotion.

3d. Replies of Commodore G. H. Cooper:

Has known me since 1839; served with me in the Perry Japan squadron, and that I was considered an efficient officer, but is not sufficiently acquainted with me to express an opinion as to my habits or fitness for promotion.

4th. Replies of Commodore J. W. A. Nicholson:

Has known me about thirty years, and served as midshipman with me in the Mediterranean squadron. *Has during thirty years seen me intoxicated more than once.* Regards me mentally and professionally qualified for promotion; but *for alleged intemperance, not.*

5th. Replies of Commodore George M. Ransom:

Has known me about thirty years, and served with me in North Atlantic squadron several months, and again when I was in command of the Lancaster, and that I apparently performed my duties in an efficient manner; that *he has reason to believe, but not from personal knowledge, but only from common report*, that *I am given to habits of intemperance;* that I am mentally and professionally qualified for promotion; that my reputation as a gentleman and an officer is unexceptionable, *otherwise than reputed habits of intemperance*, and that I am *morally* and *professionally* fit to perform all the duties of a higher grade; and that *he knows nothing against my moral character.*

6th. Replies of Commodore A. C. Rhind:

Has known me over thirty years; were midshipmen together, and served under me at Key West, in 1874, when I was in command of the Lancaster; *knows that at times I have over-indulged in wine or spirits, but does not believe me to be habitually intemperate*, and considers me mentally and morally qualified for promotion; that my reputation as an officer and a gentleman is good, and regards me as qualified for promotion, with the exception of OCCASIONAL over-indulgence in wine or spirits, and in that matter as much qualified as some others who have passed the ordeal of examination.

7th. Replies of Commodore W. F. Spicer:

Has known me since 1844, and were classmates together, but have never met on other service; *has reason to believe that I have been given to habits of intemperance;* regards me as professionally qualified for promotion, and, so far as he knows, I am a competent officer and gentleman, and if in command of a squadron *would not hesitate to send me on an important service in command of a vessel* if such employment rested *solely on his idea of my intelligence and ability as an officer.*

The foregoing testimony completes in full the *only* record before you relating to my "mental, moral, and professional fitness for promotion," which in the slightest degree calls in question my *moral status.*

The witnesses who have any knowledge of me, testify to my mental and professional qualifications as fitting me for promotion, and it is submitted whether the very unsatisfactory averments referring to habits of intemperance should have sufficient weight to prove that fact, and thus prevent me from securing the promotion to which I am in every way entitled. The gist of the testimony is as follows:

Admiral John Rodgers KNOWS *nothing personally as to my habits* BUT BELIEVES I am reputed to be an intemperate man. He does not even say *he believes I am such, nor that it is a general belief*, BUT BELIEVES (signifying even a doubt as to the fact) I am reputed to be such. His evidence being simply *hearsay* is not entitled to consideration, and should be thrown out.

Commodore G. H. Cooper knows nothing affecting my moral character, and his testimony should therefore be regarded in my favor.

Commodore J. W. A. Nicholson says that during a period of thirty years he has seen me intoxicated more than once, and *alleges intemperate habits.* His testimony is not sufficiently specific to entitle it to specific consideration. He does not state the number of times he has seen me under the influence of liquor, or whether it was during my boyhood or in later years, or whether while on or off duty; and which facts are necessary to be shown to arrive at a conclusion whether the occasions referred to establish evidence of present intemperate habits and unfitness for promotion. His testimony, therefore, being vague and indefinite, should not be entertained by the Board.

Commodore Ransom swears that he has no personal knowledge of

my having intemperate habits, and *knows nothing against my moral character* unfitting me for promotion. The testimony of this witness should be considered by the Board as in my support, throwing out that portion relating to *common report*, which, however, has not influenced the mind of the affiant to my prejudice.

Commodore Rhind swears that he *does not believe me to be habitually intemperate*, but that I have occasionally over-indulged in wine or spirits. This testimony relates to the PAST, and fails to prove habits of intemperance, which alone would unfit me for the promotion I now seek.

Admiral A. L. Case states that he was obliged to relieve me from command, in 1874, on account of intemperance. This action was *not based upon personal knowledge*, but entirely upon the reports of others, and relates to the PAST, and *has no bearing upon my habits for nearly four years past, or upon my present moral character*, as I have not seen Admiral Case during that time, and, consequently, he is incompetent to determine the fact as to whether *I am now morally fitted for promotion.*

The foregoing résumé of the evidence shows that not a single witness, with the exception of Commodore J. W. A. Nicholson, whose testimony is not entitled to consideration for the reason heretofore stated, *has any personal knowledge of my moral character, which would unfit me for promotion;* and when the great latitude given the witnesses by the respective interrogatories is considered, taking in my entire naval career, comprising a period of thirty-eight years, and which interrogatories, agreeably to the instructions of the department, should have been strictly confined to my status *from the date of my examination as captain* (the instructions prescribing that no question to any witness should refer to a time PRIOR to my last promotion), the testimony in fact should be regarded as preponderating in my favor, and in which view it is believed the Board will concur.

As the question of my promotion is to be determined alone upon the weight of evidence presented for the consideration of the Board, it is necessary that I should refer to the testimony of those officers to whom interrogatories were sent at my instance, which proves beyond a doubt my moral, mental, and professional fitness for promotion.

1st. Admiral J. H. Strong:

He has known me since 1842; that I was in command of his flagship, and discharged my duties satisfactorily, and *knows nothing of his own knowledge to disqualify me from promotion*, and *states that I have the reputation of being dissipated*, but has *never seen me intoxicated*, and, *so far as he* personally knows, I am *mentally*, MORALLY, and PROFESSIONALLY a *fit officer to perform my duties at sea in a higher grade.*

2d. Commodore F. H. Parker:

Has known me since my boyhood; served with me in Florida Bay in 1874, I in command of the Lancaster, and he as chief of staff of the united fleets, and that I performed my duties as divisional officer remarkably well, and *has no reason to believe me given to habits of intemperance;* and that I am mentally, morally, and professionally a fit officer to perform my duties at sea in a higher grade.

3d. Commodore John Guest:

Has known me from boyhood, served with me, and *does not consider that I have habits which disqualify me for promotion*, and that I am mentally, morally, and professionally qualified for promotion, and my reputation as an officer and a gentleman is excellent, and of high tone, and that he would, as commander of a squadron, have sufficient confidence

in me to send me on an important separate service in command of a vessel of war.

4th. Commodore T. H. Stevens:

Has known me since childhood, and that I served with him when he commanded an expedition up the Pamunky River, in May, 1862, to open a way for McClellan's advance to Richmond, and to protect a cavalry detachment near the White House; that my services were of great value, and most efficient, I commanding the Marblehead at that time, and very ably, and that he considers me on the score of general intelligence and ability *one of the first officers in the Navy*, and that *I am in every way qualified for promotion.* He further states that in the estimation of my brother officers I am recognized as a thorough, gallant, and accomplished officer, and an accomplished gentleman. He further states that he would feel, if the occasion was one of peril, that to send me on the important service of command of a vessel of war, *it could not be in better hands.*

5th. Chaplain F. B. Rose:

He states that in his personal association with me he *observed no habits that were not praiseworthy.*

6th. Rear-Admiral A. Murray:

Has known me thirty years, served with me in the Atlantic squadron, I in command of a gunboat, and that I performed my duties with efficiency and ability. He has seen me under the influence of liquor, *and does not regard me as unqualified for* promotion, and that *my reputation in the service is first rate*, and that I am mentally, morally, and professionally fit to perform my duties at sea in a higher grade.

7th. Dr. W. T. Hood:

In 1873 or 1874 he served with me on the Brazil station when I was in command of the flagship Lancaster. *Has never seen me intoxicated* on board ship, *and knows of no habits of mine which disqualify me for promotion.* He further states that, subsequent to sailing with me, he met me nearly every day for two years at Georgetown, where we resided, *and never knew me to be intoxicated*, and regards my reputation as excellent, and that I am in every way qualified for promotion.

In addition to this evidence of my brother officers in support of my moral character, I refer to the following testimony of prominent citizens of the District, and officers of the Army, some of whom have known me intimately for *many years past*, and others during the *last four years*, and all of whom *have had almost daily association with me during the latter period of time*, and who have had every opportunity of knowing the nature of my habits, for the purpose of proving *that during the last four years they have never seen me under the influence of wine or spirits*, and that my conduct during that time has been in every way exemplary and beyond reproach. I refer—

1st. To the testimony of Wm. W. Corcoran, who swears that he has known me for twenty-five years, and that his intimacy with me during that time has given him opportunities to judge of my character, and that for the last four or five years I have come under his personal observation, he having generally seen me as *often as four or five times a week at his house; that he has never seen me in the slightest degree under the influence of liquor, and that I have shown no evidence whatever of habits of intemperance.*

2d. The testimony of Ex-Governor Henry D. Cooke.

Has known me six or seven years; about the *last four of which time he has lived next door to me in Georgetown; he has seen me daily* and

there has been a good deal of intercourse between his family and ourselves; that *from personal knowledge he does not believe that I have habits of intemperance;* on the contrary, all that he knows of me justifies his opinion, that my habits *are exemplary* and *unexceptionable in that particular.* He further states that from his personal knowledge, he considers that I have not habits that unfit me for promotion, or for the position of a commodore in the Navy.

3d. The testimony of L. H. Pelouze, assistant adjutant-general, and brevet brigadier-general United States Army.

Has known me since the fall 1876, and has met me frequently in Georgetown and in Washington, and *from his personal knowledge of me, I have not habits of intemperance* which would unfit me for promotion.

4th. General George C. Thomas:

Has known me for thirty years and has had every opportunity of judging my character during the whole time, and especially the last four years as neighbors and frequent visitors in Georgetown, and *from personal knowledge knows that I have not habits of intemperance* which unfit me for promotion.

5th. The testimony of Wm. D. Whipple, colonel, A. D. C., brevet major-general United States Army.

Has known me about three years, and lives near me in Georgetown; has frequently met me at his own house and at my own and frequently about town, and knows *from his personal knowledge that I have not habits of intemperance* which unfit me for promotion.

The foregoing evidence fully completes my case, and as the inference is that the only question involved affecting my promotion is *imputed intemperance,* I very cheerfully submit my case upon the evidence bearing thereon, believing that it strongly preponderates in my favor, and fully proves that my moral habits justify the promotion which I now seek. I desire to state, in conclusion, that from my first entry into the service in 1839 I have ever striven to perform my duties as an officer of the Navy, with due regard to maintaining its honorable reputation, and now, after an experience of more than thirty eight years of creditable service, I feel that whatever errors that have been committed in the past will be avoided in the future, by an earnest and zealous effort on my part looking singly to the advancement of the interests of the service, and thereby sustain my reputation as an officer, who is "mentally, morally, and professionally" capable of performing all of his duties at sea in any sphere to which he may in the future be assigned.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

The NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

T.

NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

SIR: I have to request that the department will furnish the Examining Board with copies of all official papers on file touching the profes-

sional and moral character of Capt S. Nicholson, since 10th of June, 1870.

Very respectfully,

S. C. ROWAN,
Vice-Admiral and President.

Hon. R. W. THOMPSON,
Secretary of the Navy, Navy Department.

A true copy.

JAMES C. DULIN,
Recorder.

U.

NAVY DEPARTMENT,
Washington, October 15, 1877.

SIR: Your letter of this date, requesting, for the use of the Examining Board, copies of all official papers on file touching the professional and moral character of Capt. S. Nicholson, since 10th of June, 1870, is received, and in reply you are informed that the clerical force of this office is insufficient to furnish copies of all such papers as may be required when officers are ordered for examination. The original records of the Department are always accessible to the Board, and can be transmitted when called for.

In the case of Capt. S. Nicholson, I transmit herewith a statement of his service, a record of a court of inquiry of September 30, 1870, and the record of his trial by court-martial, March 13, 1874.

These records you will please return to this office when the case is finished.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

S. C. ROWAN, U. S. N.,
President Naval Examining Board, Navy Department.

V.

NAVAL EXAMINING BOARD,
Washington, November 14, 1877.

SIR: The Board, under section 1499 of the Revised Statutes, have this day received certain documentary matter from the files of the Navy Department in your case, which will be considered in connection with your examination for promotion; and you are hereby notified to appear before said Board without delay.

By direction of the President of the Board,
Respectfully,

JAMES C. DULIN,
Recorder.

Capt. S. NICHOLSON, U. S. N.,
Georgetown, D. C.

A true copy.

JAMES C. DULIN,
Recorder.

W.

NAVY DEPARTMENT, *November* 15, 1877.

SIR: Having been informed by the Recorder that since I made (as I supposed) my final statement on Tuesday last, certain documentary matter has been received by the Board which may, or may not, weigh strongly in my case, I am compelled to ask that ample time may be given me to thoroughly examine all documentary matter that has been thus received; and to this end I most respectfully request that I may have full and free access to the same. And also that I may be allowed until 1 p. m. on Monday next (19th instant) to prepare and present a statement in reply thereto.

Very respectfully,

S. NICHOLSON,
Captain, United States Navy.

Rear-Admiral S. C. ROWAN, U. S. N.,
President of Naval Examining Board.

X.

WASHINGTON, D. C., *November* 20, 1877.

GENTLEMEN: Agreeably to your summons of the 14th instant, I again appear before your Board pursuant to the provisions of section 1496, Revised Statutes, for examination as to my "mental," "moral," and "professional" fitness for promotion.

I had reason to believe, after I had fully examined all the evidence THEN before your Board relating to my case, that it had been formally closed; and, when I submitted my sworn statement in support of my case on the 13th instant, I supposed your conclusion as to my fitness for promotion would then be determined.

I now find, however, that since the conclusion, as I inferred, of my examination, the report of the proceedings of the court-martial in my case, held at Key West, Fla., during the month of March, 1874, nearly four years ago, *and after the remission of the sentence imposed* and *my restoration to rank*, had been called for by your Board, pursuant to section 1499, Revised Statutes, and that my presence now is required to present, if need be, a statement for your consideration WHY the matters and things therein stated should not be used against me in my PRESENT application for promotion.

I desire to state, with all deference to the intelligence and impartiality of this Board, I enter my protest against the consideration of the proceedings of that court, for the following reasons:

1st. That they are not pertinent to the present issue.

2d. That the remission of the entire sentence by the Secretary of the Navy, pursuant to authority of law, relieved me "EO INSTANTI" *from any and all stain of the sentence pronounced by the court, and restored me to my present position.*

3d. The declaration on the part of the department by the remission of the sentence was to the effect that by such restoration I had fully atoned for the alleged offense, and that my disability being thus removed, *I stood in the eye of the law as though no offense had been committed*, and was therefore qualified and placed in a position to discharge my duties as a captain in the Navy, as well as those pertaining to a higher grade, if occasion so required, if no act of mine in the interim disqualified me

for such service. Hence, the only question now pending before this Board, agreeably to the provisions of the statute, is to determine whether the evidence, independent of the record of this court, *which relates alone to the past*, and is not pertinent to the *present determination of the case*, is sufficient to establish the fact that I am NOW mentally, morally, and professionally fitted to perform my duties at sea in a higher grade.

The weight of evidence submitted is strongly in my support, and which should be, in my judgment, conclusive to any jury before whom my case was tried. The law does not require an investigation as to *past transactions*, which should not have the slightest weight in influencing the action of the Board, *but relates exclusively to the present condition of an officer*, and not to acts occurring four, five, or ten years ago, and which will, if not observed, work great injustice in bringing up for scrutiny every irregularity pertaining to the career of an officer, and which were committed through ignorance or without design, and are now regarded as indiscretions, and which have been more than atoned by his subsequent exemplary life. *My moral status since the date of the court-martial, nearly four years ago, stands unimpeached to the present time*, as fully established by the evidence; and while I very properly take exception to the proceedings of the court (see my resumé of the evidence, as also my letter to the Hon. Secretary of the Navy of the 12th of October last), and which proceedings, if carefully and impartially examined, would prove the fact that neither the charges or specifications are sustained, yet my alleged offence *has been punished*, and the effect of your considering anew the findings of that court in relation to transactions alleged to have occurred *nearly four years ago*, and make them applicable to my present status *would be, in fact, to punish me again for the same offense*, which would be in direct conflict with law and justice.

The proceedings of this court, therefore, are not pertinent to the issue, for the reasons above stated, and should not be considered by your Board. The effect of the remission of my sentence by the Secretary of the Navy, as ruled in substance by Judge-Advocate Holt, U. S. A., one of the most able lawyers of the country, and whose decisions are recognized as rules of action for the government of the Army, and so far as the principles of the law are involved, equally applicable to the Navy, *is to remove from me the stain of the sentence of the court, and to restore me to my previous status, and thus qualify me to fully discharge the duties of a captain in the Navy.* He further decides *that the remission of a sentence by a court-martial is a measure of reparation equivalent, practically, to an honorable discharge.* (See Digest of Opinions of Judge-Advocate General, "Removal of Disability," page 326.)

In view of these legal rulings, *I am at this date* laboring under no disability resulting from the action of the court-martial in my case, and as the weight of evidence filed in the case legally proves the fact that *at this time, the date of my examination*, I am "mentally," morally, and professionally qualified for promotion, *as there has been no act committed by me since the date of my promotion to the position of captain proving that I am morally or otherwise disqualified*, I therefore submit my case in the confident belief that full justice will be done me by this Board.

Respectfully submitted,

S. NICHOLSON,
Captain United States Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,
President of Naval Examining Board.

RECORD OF PROCEEDINGS OF THE NAVAL EXAMINING BOARD, CONVENED AT THE NAVY DEPARTMENT, WASHINGTON, D. C., IN CASE OF CAPT. SOMERVILLE NICHOLSON, U. S. N., FEBRUARY 23, 25, 27, 28, MARCH 1, 2, 4, 5, 1878.

NAVAL SOLICITOR'S OFFICE,
March 12, 1878.

This record is correct in form and substance, and the evidence sustains the finding.

JOHN A. BOLLES,
Naval Solicitor.

EXECUTIVE MANSION,
May 8, 1878.

The finding in this case is approved. Captain Nicholson will be retired in pursuance to section 1447 of the Revised Statutes.

R. B. HAYES.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 23, 1878.

The Board was convened this day at 11 o'clock a. m., in obedience to the order of the Secretary of the Navy. A copy of said order is hereto appended and marked A.

Present, Rear-Admiral John L. Worden, President; Rear-Admiral J. R. M. Mullaney, Commodore J. M. B. Clitz, Commodore Pierce Crosby, Commodore A. K. Hughes, members, and James C. Dulin, Recorder.

Capt. Somerville Nicholson, U. S. N., appeared as a candidate for promotion in obedience to an order, a copy of which is appended hereto and marked B, and the Board then proceeded to take up the examination in the case.

The order of the Secretary of the Navy convening the Board was then read aloud by the Recorder.

The President of the Board then swore the Recorder to the faithful performance of his duty as Recorder.

The Recorder then swore the members of the Board faithfully and impartially to examine and report upon the candidate about to be examined.

The Board then proceeded with the professional examination in the case.

Captain Nicholson was examined in fleet tactics and international law.

The Board then proceeded to consider Captain Nicholson's moral fitness for promotion.

The record of the proceedings of a Naval Examining Board, convened at the Navy Department, in the case of Captain Nicholson.

The findings of said Board, the records, answers, and evidence thereto annexed, furnished the Board from the files of the department, were read aloud by the Recorder in the presence and hearing of the candidate.

The record of the proceedings of said Board in the case of Captain Nicholson are annexed hereto and marked Exhibit N. Ex. B.

The President of the Board then asked Captain Nicholson if he desired to introduce any new testimony in his case.

Captain Nicholson stated, in answer to the question asked him by

the President of the Board, that he did not desire to introduce any new testimony, but would submit his case to the decision of the Board upon the evidence before it. In case the Board should introduce any new testimony he would ask to be permitted to rebut such testimony.

The candidate then submitted a paper writing to the President of the Board, requesting until Monday next to present a brief statement to the Board, which paper writing was read aloud by the Recorder, and is appended hereto and marked C.

The Board then granted Captain Nicholson's request. (See page 15, J. C. D.)

The record of the proceedings of a naval general court-martial convened on board the United States steamship Congress, Key West, Fla., in the case of Capt. Somerville Nicholson, and furnished the Board from the files of the department, was received in evidence.

The Recorder was then directed to read aloud the record of said court-martial, and pending the reading of the same the Board adjourned to meet at 10.30 a. m. on Monday next, the 25th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 25, 1878.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

The record of the proceedings of Saturday last was read and approved.

The Board then resumed consideration of the case of Captain Nicholson.

The Board by a vote designated the following officers to whom interrogatories should be forwarded in the case of Captain Nicholson, as to his fitness for promotion, viz: Rear-Admirals Thomas O. Selfridge, William Radford, C. H. Poor, S. P. Lee, T. A. Jenkins, B. F. Sands, G. H. Scott, J. J. Almy, R. N. Stembel, Fabius Stanly, William Reynolds, C. R. P. Rodgers, Daniel Ammen; and Commodores R. H. Wyman, Andrew Bryson, D. McN. Fairfax, John C. Beaumont, John C. Febiger, and Robert W. Shufeldt, U. S. N.

The Board then resumed the reading of the record of the naval general court-martial in the case of Captain Nicholson; and after said reading was concluded it then adjourned to meet on Wednesday next, the 27th instant, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 27, 1878.

The Board met pursuant to adjournment.
Present, all the members and the Recorder.
Capt. Somerville Nicholson was also present.
The record of the proceedings of yesterday was read and approved.

Captain Nicholson then asked and obtained the permission of the Board to prepare and submit a written statement setting forth his reasons why his case should be determined upon the evidence submitted to the former Board, which evidence had been read in his presence and hearing by the Board at its meeting on the 23d instant; and also protesting against the action of the Board in taking additional testimony in his case, and objecting to the further consideration of his case until the question of the competency of the Board to reopen it for the purpose of obtaining additional testimony is determined.

The written statement of Captain Nicholson was read aloud by him and is appended to this record, and marked D.

The Board was then cleared to deliberate upon the statement, protest, and objection of the candidate.

The Board considered the statement, protest, and objection of the candidate, and decided to overrule the objection.

The doors being opened and the candidate being present, the Recorder announced the decision of the Board.

Captain Nicholson then asked permission to read the statement he had prepared in his own defense.

The President of the Board informed Captain Nicholson that an opportunity would be allowed him to read his statement when all the testimony in the case will have been considered by the Board.

The Board then adjourned, to wait the answers of officers to the interrogatories of the Board, until to-morrow, the 28th instant, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 28, 1878.

The Board met pursuant to adjournment.

Present, all the members, the Recorder, and Capt. S. Nicholson.

The record of proceedings of yesterday was read and approved.

The Board having by vote, on the 25th instant, designated by name certain officers of the Navy to whom interrogatories should be forwarded in the case of Captain Nicholson, and the following named having duly answered said interrogatories and returned the same with their answers to the Board, they were read, viz: Rear-Admirals T. O. Selfridge, William Radford, S. P. Lee, T. A. Jenkins, J. J. Almy, B. F. Sands, R. N. Stembel, Fabius Stanly, William Reynolds, Daniel Ammen; and Commodores R. H. Wyman, Andrew Bryson, J. C. Febiger, J. C. Beaumont, and Robert Shufeldt, U. S. N.

Captain Nicholson stated that he would enter his protest against the admission of all the hearsay testimony contained in the answers of officers to the interrogatories of the Board in his case; and asked that all such testimony be expunged from the record.

The Board decided to admit the answers of officers to the interrogatories of the Board, have the same appended to the record, and Captain Nicholson was granted time in which to enter his written protest.

The aforesaid interrogatories and answers are annexed hereto, and marked, respectively, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, and S.

Rear-Admiral G. H. Scott returns to the Board interrogatories addressed to him, with the following indorsement thereon: "I am unable to answer the within interrogatories, as I have no recollection that Captain Nicholson has ever sailed or served on any station or duty with me." Said interrogatories are appended hereto and marked T.

A communication from Rear-Admiral C. R. P. Rodgers, U. S. N., acknowledging receipt of interrogatories, and stating that he could give none other than hearsay testimony, and asking whether he is a competent witness under such circumstances.

The President of the Board addressed Admiral Rodgers a letter in answer to his communication and requesting him to make answer to the interrogatories of the Board according to the best of his knowledge and belief. Copies of said letters are appended hereto and marked U and V.

The Board then adjourned to meet to-morrow, the 1st March, 1878, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, March 1, 1878.

The Board met pursuant to adjournment.

Present, all the members, and the Recorder.

Capt. Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of yesterday was read and approved.

Rear-Admirals C. H. Poor and C. R. P. Rodgers, and Commodore D. McN. Fairfax, U. S. N., having duly answered the interrogatories addressed to them, and returned the same with their answers to the Board, they were read aloud by the Recorder, and are annexed hereto, and marked respectively W, X, and Y.

Captain Nicholson then stated to the Board that he had prepared a paper writing protesting against the admission of all hearsay testimony, and specifically the hearsay testimony contained in the answers of officers to the interrogatories of the Board.

The President of the Board informed Captain Nicholson that he could proceed to read the paper writing he had prepared.

Captain Nicholson then read aloud his protest, and after concluding its reading requested permission to submit an additional paper writing protesting against the admission of the hearsay testimony contained in answers of Rear-Admirals C. H. Poor and C. R. P. Rodgers and Commodore DMc. N. Fairfax, which answers had been read this day to the Board in his presence and hearing.

The Board granted Captain Nicholson's request, and that officer having prepared his protest in writing, read aloud the same to the Board.

The paper writings containing the protest of Captain Nicholson are appended hereto, and marked S. N., Nos. 1 and 2.

The Board was then cleared to consider the matter.

The door being opened, and Captain Nicholson being present, the Recorder announced the decision of the Board, that the answers of officers to the interrogatories of the Board would be received, and appended to the record of its proceedings.

Captain Nicholson then asked that the record of proceedings of Saturday last, the 23d ultimo, may be so amended as to show that at the time the Board decided to receive the record of the court-martial in his case as evidence, he was not present; and in this connection stated that he was not informed of the fact until Wednesday, the 27th ultimo, and that said record had never been read in his presence.

The Board was cleared and the request and statement of Captain Nicholson considered.

The doors being opened, and Captain Nicholson being present, the Recorder announced the decision of the Board as follows:

The Board decided to amend its record of proceedings of Saturday last, after the words, "The Board granted Captain Nicholson's request," and beginning for the same on the tenth line, page 4, as follows: *The Board then proceeded to read the record of the court-martial in the case of Captain Nicholson; and the President of the Board then asked the candidate if he desired to hear said record read, and that officer replied that he was familiar with the record and did not desire to hear it read, and he thereupon withdrew.*

Captain Nicholson then submitted a further protest in writing against the correction of the record as made by the Board. Said protest is appended hereto and marked S. N., No. 4.

The Board was again cleared to consider the protest of Captain Nicholson.

The doors being opened, and Captain Nicholson being present, the

Recorder announced the decision of the Board, that the Board, after consideration of the protest, dissent from the view expressed by the candidate, and decided not further to amend its record of proceedings of the 23d ultimo, and that said record as amended is approved by the Board.

Captain Nicholson then submitted a request in writing that the Board adjourn until to-morrow at 10.30 a. m., to allow him to have such witnesses present that he may desire to interrogate.

The request of Captain Nicholson is appended to this record and marked S. N., No. 5.

The Board considered the request, and thereupon adjourned to meet to-morrow, the 2d March, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT.
Washington, March 2, 1873.

The Board met pursuant to adjournment.

Present, all the members, and the Recorder. Capt. Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of yesterday was read and approved.

Captain Nicholson requested that interrogatories be forwarded to Rear-Admiral L. M. Powell, U. S. N., for answers as to his fitness for promotion.

The Board addressed interrogatories to Rear-Admiral L. M. Powell, agreeably to the request of Captain Nicholson.

Hon. DANIEL W. VOORHEES was then called as a witness by Captain Nicholson; and that gentleman being present, was duly sworn by the President of the Board, and testified as follows:

Question. Please state your name, residence, and present occupation.

Answer. Daniel W. Voorhees, of Indiana; a lawyer by profession, and at present United States Senator.

Question. How long have you known Captain Nicholson?

Answer. I think I met Captain Nicholson first about ten or twelve years ago.

Question. In your association with Captain Nicholson do you or do you not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I know of no such habits on the part of Captain Nicholson as, in my opinion, would render him unfit for promotion. In my association with him I have never seen any indication of a tendency to intemperance; on the contrary, during the last two or three years, it has so happened that I have been thrown socially a great deal with Captain Nicholson, and have observed an abstinence on his part under the most tempting circumstances that surprised me. Both last New Year's Day and the New Year's Day before that I was one of a party of several gentlemen, of which Captain Nicholson was also one, who made social calls together in this city. Our calls were very general, and were met with the traditional hospitality of Washington City; and while all the rest of us indulged in wine and similar refreshments, it was very observable that Captain Nicholson did not.

Question. Would you, as a large owner in an important steamship company, have sufficient confidence in the moral and professional character of Captain Nicholson to intrust him with the command of one of its ships when freighted with a valuable cargo?

Answer. From what I know of Captain Nicholson personally, and from the high reputation as a capable officer that I understand he enjoys, I would not hesitate to trust him with a vessel that contained my wife and children; so far as my own knowledge extends of Captain Nicholson, all that I know of him is very favorable.

There being no further questions to ask, the testimony of the witness as recorded was then read over to him, and by him pronounced correct.

JOHN J. KEY was next called as a witness by Captain Nicholson, and that gentleman, being present, was duly sworn by the President of the Board, and testified as follows:

Question. (By Captain Nicholson.) Please state your name, residence, and present occupation.

Answer. John J. Key; residence, Georgetown, D. C.; and a lawyer by profession.

Question. How long have you known Captain Nicholson?

Answer. I have been intimately associated with Captain Nicholson since the year 1873. I know of Captain Nicholson by reputation, and frequently have heard of him—as early as the year 1862. Some knowledge of Captain Nicholson's character was given to me by my brother, Colonel Key, who was a member of General McClellan's staff at that time, who met Captain Nicholson during the time that McClellan was on York River and during the Peninsular campaign. This information was exceedingly favorable to Captain Nicholson, both as to that officer professionally and morally.

Question. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I, as stated, became intimately acquainted with Captain Nicholson in 1873. The social relations existing between the two families has thrown Captain Nicholson and myself together in our intercourse with one another almost weekly, and at any rate frequently, except when I would be absent for a longer period from my home. During the period of time I have spoken of, at our homes and in general society, I have frequently had an opportunity of ascertaining and knowing the habits of Captain Nicholson as to temperance or intemperance. During that period of time, if he had been a man of intemperate habits, in my opinion the same must have become known to me. From my knowledge I state that I believe Captain Nicholson's habits since the year 1873 have been good. In connection with this, on the New Year's days 1876 and 1877 Captain Nicholson and myself together made the usual calls on our friends, and on each of those occasions, while Captain Nicholson did not entirely abstain from the use of wine, he did not use it to excess, or as much as was ordinarily the habit of gentlemen making those social visits. We commenced our visits together and they were closed together, when we returned to our homes in the evening. Unqualifiedly I say that Captain Nicholson's habits since I have known him, do not disqualify him, in any degree, from promotion in his profession.

Question. Would you, as a large owner of an important steamship company, have sufficient confidence in the moral and professional character of Captain Nicholson to intrust him with the command of one of its ships when freighted with a valuable cargo?

Answer. From my knowledge of Captain Nicholson, and from his reputation, both public and from other sources, I would have every confidence in intrusting him with any vessel, however valuable her cargo might be.

Question. (By the Board.) You have given in your answers the impressions you received of Captain Nicholson from your brother; have you ever heard from other sources anything in reference to Captain Nicholson's being given to habits of intemperance?

(Captain Nicholson objected to the question being put to the witness.)

The Board was cleared to consider the objection of Captain Nicholson.

The doors being opened, and the candidate and the witness being present, the Recorder announced that the Board had decided to overrule the objection.

The question of the Board to the witness, as recorded, was then read aloud by the Recorder.

Answer. Yes; I have. Without being able now to remember either gentlemen, officers of the Navy or citizens, I have frequently heard the habits of Captain Nicholson spoken of, and I have heard expressions of opinion widely differing, both from gentlemen connected with the Navy and others. In those expressions and views generally, and I may say always as far as I recollect, was connected with Captain Nicholson previous to my acquaintance with him. Since that time I have heard but one expression, that, whatever might have been the habits of Captain Nicholson during a certain period of his life, they were now of a character such as his restoration would conduce to the interests of the country, and that he was entirely, both from a knowledge of his profession and present condition, a fit person to whom to intrust the interests of his country.

There being no further question to ask the witness, his testimony, as recorded, was then read over to him, and by him pronounced correct; whereupon the witness withdrew.

Rear-Admiral L. M. POWELL, U. S. N., having made answers to the interrogatories addressed to him by the Board, and returned said interrogatories with his answers to the Board, they were read in evidence, and are appended hereto and marked "S. N., No. 6."

Captain Nicholson then requested until 1 o'clock p. m., on Monday next, to prepare a written statement of his case.

The Board granted the request of Captain Nicholson; and thereupon adjourned to meet at 1 o'clock p. m. on Monday next, the 4th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington March 4, 1878.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

Captain Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of Saturday was read, and approved.

Captain Nicholson then submitted the following statement to the Board.

NAVY DEPARTMENT,
March 4, 1878.

Mr. PRESIDENT AND GENTLEMEN OF THE BOARD: Owing to Sunday having intervened since the last adjournment of the Board, I regret to state that I have been unable to prepare, and have properly copied the final statement which I desire to present to the Board; and I am compelled to request that I may be allowed until 12 o'clock to-morrow, the 5th instant, to present the statement referred to.

Respectfully submitted.

S. NICHOLSON,
Captain U. S. N.

The Board was cleared to consider the statement and request of Captain Nicholson; and after full consideration decided to grant this further request of Captain Nicholson.

The doors being opened, and Captain Nicholson being present, the decision of the Board was announced in his hearing.

The Board then adjourned to meet at 12 o'clock noon to-morrow, the 5th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, March 5, 1878.

The Board met pursuant to adjournment.

Present, all the members and the Recorder.

Capt. S. Nicholson, accompanied by his counsel, S. V. Niles, attorney-at-law, were also present.

The record of the proceedings of yesterday was read and approved.

The Board then resumed consideration of the case of Captain Nicholson.

Captain Nicholson then, by his counsel, proceeded to read aloud the final statement of his case to the Board.

At the conclusion of the reading of the final statement of Captain Nicholson, that officer read an additional statement protesting against the admission of the testimony of Rear-Admiral Thomas O. Selfridge.

Said statements are annexed to this record and marked S. N. Nos. 7 and 8.

A letter from Rear-Admiral J. H. Strong, U. S. N., under date 10th March, 1875, and addressed to Capt. S. Nicholson, was read, and at the request of Captain Nicholson, is appended hereto and marked S. N. No. 9.

There being no further evidence to offer in the case, the President of the Board relieved Captain Nicholson from further attendance upon the Board.

The Board being cleared, it then proceeded to deliberate upon the evidence in the case hereto annexed, and marked as aforesaid, and also upon the professional examination herein stated; and decided thereon that Captain Nicholson possesses in a high degree, the mental and professional qualifications to perform efficiently all the duties of a naval officer at sea, in the next higher grade.

The Board further find that Capt. Somerville Nicholson, U. S. N., has failed to established his moral fitness for promotion, to the satisfaction of the Board; and we do *not* therefore recommend him for promotion.

JOHN L. WORDEN,
Rear-Admiral and President.
J. R. M. MULLANY,
Rear-Admiral.
J. M. B. CLITZ.
Commodore.
PIERCE CROSBY,
Commodore.
A. K. HUGHES,
Commodore.

JAMES C. DULIN,
Recorder.

A.

NAVY DEPARTMENT,
Washington, February 15, 1878.

SIR: A Naval Examining Board for the examination of such officers as may be notified to appear before it as candidates for promotion, is hereby ordered to convene at this department on Wednesday, the 20th instant, at noon, or as soon thereafter as practicable. The Board will consist of yourself, as senior member and president, and of Rear Admiral J. R. M. Mullany and Commodores J. M. B. Clitz, Pierce Crosby, and A. K. Hughes as members. Mr. James C. Dulin will act as Recorder.

The Board will be organized anew in each case, as follows, viz: The senior member will swear the Recorder to the faithful performance of his duty as Recorder. The Recorder will then swear the members of the Board faithfully and impartially to examine, and report upon the candidate about to be examined.

A copy of this order, and of all orders addressed by the department to any Member of the Board, or to the Recorder, and also the original, or a copy, of every record or paper, used in the case for any purpose, must be attached to the record of that case.

No fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into, or considered, in any case, and the record must show, as fully as may be practicable, everything which assisted the Board in forming its opinion.

The Board will by vote designate the officers to whom interrogatories shall, in any case, be forwarded for answers as to the mental, moral, or professional fitness for promotion of the candidate.

No such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank.

Such witnesses as the candidate may reasonably request to have examined upon written interrogatories, or orally, under oath, administered by the senior member, shall be examined. Whenever such request is by the Board deemed unreasonable it shall be at once referred to the Secretary of the Navy for decision.

Each record must be signed by every member and by the Recorder, and must show who of the members concurred in, and who, if any, dissented from, the opinion of the Board.

Whenever the Board fails to recommend a candidate for promotion, the record will state whether such failure is owing to his moral, mental, or professional unfitness for promotion.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Rear-Admiral JOHN L. WORDEN,
Washington, D. C.

A true copy.
JAMES C. DULIN,
Recorder.

B.

NAVY DEPARTMENT,
Washington, February 16, 1878.

SIR: Report to Rear Admiral J. L. Worden, on the 20th instant, for

examination preliminary to promotion, required by section 1496 of the Revised Statutes, by a Board of which he is President.

Respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Capt. S. NICHOLSON, U. S. N.,
Georgetown, D. C.

A true copy.
JAMES C. DULIN,
Recorder.

C.

WASHINGTON, D. C., *February* 23, 1878.

SIR: Certain official documents having come to my knowledge since the action of the former Board which I think have a bearing in my case, copies of which have been furnished me by permission of the Secretary of the Navy, I respectfully request until Monday next to present a brief statement to the Board.

Respectfully,

S. NICHOLSON.
Captain, United States Navy.

Rear-Admiral J. L. WORDEN,
President Examining Board.

D.

NAVY DEPARTMENT, *February* 27, 1878.

MR. PRESIDENT AND GENTLEMEN OF THE BOARD: When I was dis charged from attendance on the Board, on Saturday morning last, the 23d instant, I was led to believe that my case was to be determined upon the evidence submitted to the former Board, the record of which had been read before you and in my presence, and that no additional evidence would be required, and that my case, so far as the evidence was concerned, was formally closed, and that the Board would allow me until Monday morning, at 10.30 a. m., to present a sworn statement bearing upon my case. Agreeably to this ruling, I duly appeared and found the Board in session, but was not called to appear before the Board. I remained in attendance for more than three hours, when to my astonishment I was notified by the Recorder that my case had been reopened, and that additional interrogatories would be sent to some eighteen witnesses, comprising eight officers on the active list and ten officers on the retired list of the Navy.

As a matter of duty to myself, I must enter my protest against this action, from the fact that, so far as the testimony was concerned, it was formally closed, and no additional evidence should be introduced without my consent; and further, that, by this action, I am deprived of the appearance of a most important witness in my case, that of the Hon. E. T. Beale, late minister to Austria, and a former officer of the Navy, who has known me from my boyhood, and who left the city on Monday last, the 25th instant, for California. I therefore object to the further consideration of my case until the question of the competency of the Board

to reopen the case for the purpose of obtaining additional testimony is determined, after the distinct and positive understanding that so far as the testimony was concerned it would rest upon the record of the proceedings of the first Board.

In this connection, with your permission, I will proceed to read the statements I had proposed, agreeably to this understanding, to submit to the Board on Monday morning, the 25th instant.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

E.

Interrogatories addressed to Rear-Admiral T. O. Selfridge, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Slightly for several years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Have never served with him; have only been associated as neighbors.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I have seen him partially inebriated once or twice. Once in a horse-car, in 1877. As to the other, I cannot recollect time or place.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I am unable to answer.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I have had no opportunity of judging.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. That he is an intemperate officer.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. From my own observation, and general report, I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Not morally qualified.

THOS. O. SELFRIDGE,
Rear-Admiral, United States Navy.

Witnesses:

THORNTON A. JENKINS,
Rear-Admiral, United States Navy.

J. R. SELFRIDGE,
Lieutenant, United States Navy.

F.

Interrogatories addressed to Rear-Admiral William Radford, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?
Answer. Ten years or more.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. He performed his duty satisfactorily. Served in the Washington navy-yard as a commander two or more years.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I know nothing, personally, of his habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Not having any official or personal knowledge of his conduct during his last cruise at sea, I cannot intelligently answer queries Nos. 7 and 8.

WM. RADFORD,
Rear Admiral, United States Navy.

Witness:
J. H. UPSHUR,
Captain, United States Navy.

G.

Interrogatories addressed to Rear-Admiral S. P. Lee, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?
Answer. Some time before the late civil war.

No. 2. Has Captain Nicholson sailed or served on any station or duty

with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. He commanded first an iron-clad, then a blockader, in the North Atlantic blockading squadron, then under my command, for one year and four months in 1863 and 1864. He was efficient and gallant.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. During the period referred to (in No. 2), he was once under the influence of liquor on duty. I have never seen him so before or since when on or off duty, in war or peace.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Good, so far as I personally know, except as to the partial qualification in my answer to No. 3.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Yes; provided the main feature required in the important separate service was gallant conduct.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Yes; so far as I know from his service under my command.

S. P. LEE,
Rear-Admiral.

Witnesses:

WILLIAM N. JEFFERS, *Commodore.*
EDWARD P. LULL, *Commander United States Navy.*

H.

Interrogatories addressed to Rear-Admiral Thornton A. Jenkins, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. I do not know. I remember to have been acquainted with him many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. I have never been associated with him on duty, and have never had social relations with him further than pleasant recognitions at meeting him.

No. 3 In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Having had no official, personal, or social relations with him, I do not know personally anything either favorable or unfavorable to him as an officer.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you not consider him mentally qualified for promotion?

Answer. As a gentleman met on the street and occasionally in society, I never discovered any deficiency of intellect.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Having had no association with him, I am not competent to give any opinion or answer.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. As a gentleman I have never heard anything against him. As an officer I have heard different opinions expressed.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I cannot answer that question in regard to an officer about whom I personally literally know nothing.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. My previous answers would seem to show my utter imcompetency to properly answer this.

THORNTON A. JENKINS,
Rear-Admiral, United States Navy.

Witnesses:

A. H. McCORMICK,
Commander, United States Navy.

F. V. McNAIR,
Commander, United States Navy.

I.

Interrogatories addressed to Rear-Admiral J. J. Almy, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Don't recollect when I first met him. Have known him for many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Saw him two or three times when in command of the Marblehead, on the South Atlantic station, under Admiral Dupont, in 1863; also saw him a few times when in command of the State of Georgia, on

the North Atlantic station, under Admiral Lee, in 1864. Upon these occasions didn't see enough of him to form a judgment whether he performed his duty in an efficient manner or not.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. In my limited official association with Captain Nicholson I didn't observe anything in his habits which would disqualify him from promotion, or give me reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. As before remarked, my association with Captain Nicholson when in command was of too short a duration to enable me to judge of his general intelligence and mental capacity for command.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I have to give the same answer to this question as I did to No. 4.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. From limited intercourse with him when in command, but seeing him often in social life for several years, his general reputation as an officer and gentleman was good, so far as I was enabled to judge.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Don't know enough of his professional character and abilities to give an opinion.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Unable to form an opinion, as I don't know enough about him.

Respectfully submitted.

JOHN J. ALMY,
Rear-Admiral, United States Navy.

Witnesses:

W. W. QUEEN,
Captain, United States Navy.

M. FLETCHER,
Chief Engineer, United States Navy.

J.

Interrogatories addressed to Rear-Admiral B. F. Sands, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since he was lieutenant.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Captain Nicholson served in division under my command off Wilmington (he in command of steamer Georgia), for a short time in 1864, in which time we met but once. As well as I can remember, his duty was performed efficiently.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I know nothing, personally, of his habits.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. From my opportunities of judging, I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?

Answer. I cannot testify as to his general reputation.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. From what personal knowledge I have, I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. From what personal knowledge I have, I would.

B. F. SANDS,
Rear-Admiral.

Subscribed and sworn to before me this 26th day of February, A. D. 1878.

[SEAL.]

T. P. B. SANDS,
United States Commissioner.

K.

Interrogatories addressed to Rear-Admiral Roger N. Stembel, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since 1839.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. From 1839 to 1842. On board the United States Brandywine, on the Mediterranean station, as midshipman; he performed his duties efficiently.

No. 3. In your association with Captain Nicholson, do you or not

know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Our associations of late years have been so limited, I do not know from my own observation that he has such habits, though I have reason to believe that he is given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Not having served together since 1842, I do not consider myself competent to pronounce upon his professional attainments, though I have never heard them questioned.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. So far as my knowledge extends, he is considered as both, barring his intemperate habits.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Mentally I do; morally I do not, for the reason stated in interrogatory No. 3; professionally, see interrogatory No. 5.

Very respectfully,

R. N. STEMBEL,
Rear-Admiral, United States Navy.

Witnessed by—
W. W. QUEEN,
Captain, United States Navy.
S. R. FRANKLIN,
Captain, United States Navy.

L.

Interrogatories addressed to Rear Admiral Fabius Stanley, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Fifteen or twenty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Not that I recollect.

No. 3. In your association with Captain Nicholsor, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Not from my association with him. No reason except rumor.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Captain Nicholson, when interested, has a positive manner, which some construe as rudeness; others regard it as a fit quality for an officer.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do.

FABIUS STANLEY,
Rear-Admiral, United States Navy.

Witnesses:
R. W. SHUFELDT,
Commodore, United States Navy.
J. R. BARTLETT,
Commander, United States Navy.

M.

Interrogatories addressed to William Reynolds, rear-admiral, U. S. N., in the case of Somerville Nicholson, captain, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since 1847.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Yes, on steamer Alleghany, 1847, 1848, 1849; Norfolk, Brazil, and Mediterranean, as master; he did perform his duties in an efficient manner; also on Small-arms Board in 1869.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I do not know that he has habits which disqualify him for promotion. I have reason to believe that he has been occasionally intemperate.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would have every confidence in him for such a service, if he could or would refrain entirely from the taste of intoxicating beverages.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do, under the qualification expressed in answer to No. 7.

WM. REYNOLDS,
Retired Rear-Admiral, U. S. N.

Witnesses to signature:
J. C. HOWELL, *Rear-Admiral.*
GEO. B. BALCH, *Commodore.*

WASHINGTON, *February* 2, 1878.

N.

Interrogatories addressed to Rear-Admiral Daniel Ammen, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, *Revised Statutes of the United States.*

No. 1. How long have you known Captain Nicholson?

Answer. Twenty years or more.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. We have never served on the same vessel or on any other duty.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. He visited the Patapsco in November, 1862, and went from Wilmington, Del., to Philadelphia, a passage of a few hours; he visited the Miantonomoh, in Washington, in the early part of 1866, and was unmistakably intoxicated on both occasions.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do consider him mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I think I know him sufficiently well to have the opinion that he is professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. His reputation as an officer and a gentleman is good, so far as it can be, coupled with the reputation of having intemperate habits.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do not.

DANL. AMMEN,
Rear-Admiral.

Subscribed and sworn to before me this 27th day of February, 1878.
[L. S.] JAMES C. DULIN,
Justice of the Peace.

O.

Interrogatories addressed to Commodore R. H. Wyman, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. As far as my recollection serves me, about thirty-six years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. We have never served together or on the same station.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Personally I have no knowledge of any habits rendering him disqualified for promotion. Well-substantiated report accuses him of intemperance when in command.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Have never served together.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Captain Nicholson's general reputation as an officer and a gentleman, with exception of answer as embraced in No. 3, is excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, mor-

ally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Professionally and mentally, yes. In my opinion, an officer addicted to intemperance cannot be fit to command.

R. H. WYMAN,
Commodore, United States Navy.

Witnesses:

ALLEN V. REED,
Commander, United States Navy.

J. E. PILLSBURY,
Lieutenant, United States Navy.

P.

Interrogatories addressed to Commodore Andrew Bryson, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Since 1874, I think.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Have never served together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Have never been associated with him, but believe him to have been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Have had no opportunity of judging.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Never having served together, do not know what his professional attainments are.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Have never heard his reputation discussed, save that he had been given to habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Cannot judge of his mental or professional ability. I would not, unless it could be proven to me that those habits of intemperance to which I believe him to have been addicted no longer exist.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Do not know, *mentally* or *professionally*. Do not consider

him a fit officer to perform all his duties at sea in a higher grade, unless the habits alluded to have been changed.

A. BRYSON,
Commodore, United States Navy.

GEORGE E. BUCKLEY, [SEAL.]
Notary Public.

Q.

Interrogatories addressed to Commodore J. C. Febiger, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. For a number of years; exact time unknown.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in whatcapacity; and did he perform his duty in an efficient manner?

Answer. I do not remember of ever having served together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Have no personal knowledge.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Have not sufficient personal knowledge to answer.

No. 5. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Not good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. Not if other officers were available.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do not.

JOHN C. FEBIGER,
Commodore.

Witnesses:

I. C. P. DE KRAFFT, *Captain.*

D. G. MCRITCHIE, *Lieutenant United States Navy.*

R.

Interrogatories addressed to Commodore J. C. Beaumont, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. To the best of my recollection, about eighteen years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Have not served with him since his last promotion.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. From personal knowledge, I know of no habits which would unqualify him for promotion.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. The occasion of such important separate service must arise before I would determine my action in this matter. Ordinarily I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I do.

J. C. BEAUMONT,
Commodore, United States Navy.

Subscribed and sworn to before me this 27th day of February, 1878.

[L. S.]

JAMES C. DULIN,
Justice of the Peace.

S.

Interrogatories addressed to Commodore Robert Shufeldt, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. I have known him about thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. In 1869 and 1870 we were on joint service at Portland, Me., during the funeral ceremonies of Mr. Peabody. He commanded the Benicia and I commanded the Miantonomoh. On one occasion during that time, I visited the ship under his command and found him in a state of intoxication, and unfit for duty. I have never been associated with Captain Nicholson since, neither on shore or afloat, on duty.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. I do not know of my personal knowledge that Captain Nicholson is given to intemperance as a habit, nor have I any personal reason for believing so.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I consider him mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I consider him professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Captain Nicholson has a high reputation, both as an officer and as a gentleman.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. I would not hesitate to send him on important separate service if after a thorough investigation I found that he was not given to habits of intemperance.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I consider him *mentally* and *professionally* fit to perform all his duties at sea in a higher grade. I am not qualified from personal knowledge to express an opinion as to his *moral* qualifications, if that word is intended to embrace in its meaning such habits of an officer as may disqualify him for promotion.

R. W. SHUFELDT,
Commodore, United States Navy.

Sworn and subscribed to before me this 28th day of February, A. D. 1878.

[L. S.]

JAMES C. DULIN,
Justice of the Peace.

T.

Interrogatories addressed to Rear-Admiral G. H. Scott, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

No. 6. What is the general reputation of Captain Nicholson in the Navy, as an officer and gentleman?

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

I am unable to answer the within interrogatories, as I have no recollection that Captain Nicholson has ever sailed or served on any station or duty with me.

G. H. SCOTT,
Rear Admiral, United States Navy.

U.

UNITED STATES NAVAL ACADEMY,
Annapolis, Md., February 26, 1878.

SIR: I have this morning had the honor to receive interrogatories in the case of Capt. Somerville Nicholson, sent to me by you as President of the Examining Board.

As I have been in no way associated with Captain Nicholson upon duty for more than fifteen years, and as I could give none other than hearsay testimony as to any alleged irregularity on his part, I would respectfully ask whether I am a competent witness, under such circumstances.

I beg to await your reply before answering the very searching interrogatories.

Very respectfully, your obedient servant,

C. R. P. RODGERS,
Rear-Admiral, United States Navy.

Rear-Admiral JOHN L. WORDEN, U. S. N.,
President Examining Board, Navy Department.

V.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 28, 1878.

SIR: Your communication of yesterday date is received. In reply I have to request that you will be pleased to make answers to the inter-

rogatories addressed to you by the Board, to the best of your knowledge and belief.

I am, sir, very respectfully,

JOHN L. WORDEN,
Rear-Admiral and President of Board.

Rear-Admiral C. R. P. RODGERS, U. S. N.,
Superintendent Naval Academy.

W.

Interrogatories addressed to Rear-Admiral C. H. Poor, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. For many years; can't say how many.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. Never served together on any station or duty.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. Nothing ever came under my own observation to indicate habits rendering Captain Nicholson unfit for promotion; have heard him charged with intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. Not having been associated with Captain Nicholson on duty, cannot explicitly answer this question.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. Same as answer to preceding question.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. The reputation of Captain Nicholson in the Navy is unfavorable, on account of alleged habits of intemperance; as a gentleman, he stands high.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. As a commander of a squadron I could not, on account of Captain Nicholson's reputed habits of intemperance, conscientiously trust him with an important separate command of a vessel of war, unless fully convinced that the imputation was removed by long-continued abstinence.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. I consider Captain Nicholson morally, in the general accept-

ation of the term, and professionally, according to his reputation (pro fessionally), fit to perform all his duties at sea in a higher grade.

Very respectfully,

C. H. POOR,
Rear-Admiral, United States Navy.

Subscribed and sworn to before me this 28th day of February, 1878.

JAMES C. DULIN,
Recorder.

X.

Interrogatories addressed to Rear-Admiral C. R. P. Rodgers, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session in Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

Answer. Thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. We were messmates on the Coast-Survey for a year or two, where he performed his duty in the most efficient and exemplary manner. We were, for a short time, in the South Atlantic squadron together during the war, but I saw very little of him.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. When we were messmates his habits were exemplary. Since then I have reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you or not consider him mentally qualified for promotion?

Answer. In the highest degree.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. He is one of the most skillful and competent officers in the Navy.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. Excellent, except as to sobriety.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. On account of his alleged habits, I should not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. On account of his alleged habits, I do not.

C. R. P. RODGERS,
Rear-Admiral, United States Navy.

Witnesses:

JAMES A. GREER, *Captain, United States Navy.*
S. D. GREENE, *Commander, United States Navy.*

Y.

Interrogatories addressed to Commodore D. McN. Fairfax, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. Since 1840.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. In 1870 or 1871 he fitted out a ship of war, Benicia, at Portsmouth, N. H., while I was captain and executive, and twice was prevented attending to his duties as captain in consequence of drinking to excess. Commodore John Winslow was commandant of station.* Earlier, as midshipman on board the Brandywine in the Mediterranean in 1841, he performed his duty in an efficient manner.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

Answer. From my association with Captain Nicholson, I know that his habits unfit him for promotion. I have reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you or not consider him mentally qualified for promotion?

Answer. I believe Captain Nicholson mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer. I consider Captain Nicholson professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?

Answer. When not drinking hard, a gentleman. His reputation is that of a drunkard oftentimes on duty.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

Answer. No; I would not have sufficient confidence in Captain Nicholson to send him on important separate service in command of a vessel of war.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

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* It will naturally be asked why I did not report Captain Nicholson when he was fitting out the Benicia. I did say to Commodore Winslow that Captain Nicholson was kept away from the yard by inability brought on by drinking, and suggested that he be required to attend every day at the yard to look after his ship, then nearly ready for sea; but he replied that he was "making a fool of himself he knew, having seen him at our quarters drunk" on the occasion of a little party which I purposely did not attend.

Answer. Mentally and professionally, yes, but morally unfit to perform his duties at sea in a higher grade.

D. McN. FAIRFAX,
Commodore, United States Navy.

Witnesses:
NATHAN P. TOWNE,
Past Assistant Engineer, United States Navy.
S. DENISON HURLBUT,
Past Assistant Paymaster.

S. N., No. 1.

WASHINGTON, D. C., *March* 1, 1878.

GENTLEMEN: When the respective replies of the several officers to the interrogatories sent out by this Board were read, on the 28th ultimo, for its information, I entered my protest against the consideration of those answers referring to my moral character which were not founded upon personal knowledge, but which were based exclusively upon the *hearsay* declaration of persons who were not named by them or upon mere idle *rumor*, on the ground that such testimony was inadmissible, being in conflict with the law governing the case.

In addition to the objection stated, I further protested against the consideration of any answer relating to facts and circumstances occurring *prior* to my last examination for promotion, to a captain, when I was promoted to my present position, as being in conflict with the instructions of the department, prescribed by the President of the United States, through the Secretary of the Navy for the guidance of Examining Boards (*vide* section 1496, Revised Statutes), providing for the appointment of such boards by the President, and who, by virtue of his authority, prescribes the rules which shall govern them in their official action. The fact is recognized that the functions of the Examining Board are of a *judicial character;* it is to receive the sworn testimony of witnesses, and duly examine and weigh the same, throwing out that which is irrelevant or of a hearsay character, or mere general *opinions* affecting the character of the applicant for promotion, and only consider that proof which is direct, and derived from an actual *personal knowledge* of the matter and things sworn to.

As the principles of law governing courts-martial and courts of inquiry are equally applicable to Examining Boards, it is necessary that I should refer to the law applicable to *hearsay* testimony in support of my protests against the consideration of this class of testimony.

"Benét on Military Law and Courts Martial," a recognized authority in our own country, in defining "hearsay evidence," uses the following language, (p. 251):

> The term "hearsay evidence" is used with reference both to that which is written and that which is spoken. But in its legal sense it is confined to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the veracity and competency of some other person from whom the witness may have received his information. The general rule is that hearsay evidence *is not receivable.*
>
> It is inadmissible on two grounds: First, that the party originally stating the facts does not make the statement under the sanctity of an oath; and, secondly, that the party against whom the evidence is offered would lose the opportunity of examining into the means of knowledge of the party making the statement. By our Articles of War, every fact against the prisoner must be proven on oath, and, by the Constitution, the accused must be confronted with the witnesses against him.

Besides these tests, it must be considered that such evidence is very liable to be *fallacious* from the facility with which it may have been imperfectly heard, or from having been misunderstood or inaccurately remembered, or perhaps perverted, or possibly altogether fabricated. It is to be observed, also, that persons communicating such evidence are not subject to the danger of a prosecution for perjury; for where the hearsay statement is said to have been made when no third person was present, the witness has no cause to be apprehensive of punishment, even though he has entirely fabricated the statement.

As the conclusions reached by this authority are founded upon well-defined principles of law, recognized and adopted by all the military courts of our country, and which must be received and recognized by this Board as a rule of action for its guidance, I will proceed to enter my objections *seriatim* to the respective answers above referred to, and insist that they should be thrown out by the Board as inadmissible.

1st. I protest against the reception of the testimony of Admiral T. O. Selfridge, who swears that he has never served with me, and has only been associated with me as a neighbor, and states that he has seen me *partially inebriated once or twice*—once in a horse-car, in 1877, but is at fault as to the other, not recollecting time or place.

In this case his memory shows a remarkable degree of treachery, recollecting that I was partially inebriated on one occasion, which he recollects with distinctness as to place but not as to time, but is ignorant as to the other occasion, and concludes that my general reputation is that I am an intemperate officer, failing to state the reasons inducing this opinion, from what source, or whether it is reliable, and which is a very remarkable conclusion after admitting his failure to prove the *second time* that I was *partially inebriated*, although he was my neighbor for a year or more, and that *he had never served with me.*

2d. In the matter of the reception of the evidence of Commodore R. W. Shufeldt, while he fully indorses me, I protest against his evidence, for the reason that *the only time* he ever saw me under the influence of liquor was *antecedent* to the date of my last examination, and therefore is not admissible under the rules as prescribed by the President for the government of Examining Boards.

3d. I protest against the reception of the testimony of Commodore J. C. Febiger, on the ground that while he has known me for a number of years, he has no *personal knowledge* that I am given to habits of intemperance, and yet he declares that my reputation as an officer is not good, without specifying the sources inducing the declaration.

4th. I enter my protest against the reception of the testimony of Commodore A. Bryson, on the ground that while he declares he has never served with me and has *no personal knowledge of my qualities*, and has only known me since 1874, *four years ago*, he believes that I *have* been given to habits of intemperance. As the belief is founded upon mere opinion, and the sources of his information are not stated, and relates to a period of time which is *believed to be antecedent* to my last examination, not seeing him since April, 1874, therefore under the prescribed rule his testimony in inadmissible.

5th. I protest against the reception of the testimony of Commodore R. N. Stembel who, while he swears that he has known me *thirty-nine years* and *served with me three years* on the Brandywine, has *no personal knowledge* that I am given to habits of intemperance, and yet believes I am given to such habits. As this declaration is founded upon information acquired from *other sources*, although he served with me for three years and has known me for thirty eight, *and yet has no personal knowledge of such habits*, his testimony is therefore inadmissible.

6th. I also enter my formal protest against the consideration of the

testimony of Rear-Admiral Daniel Ammen, on the ground that the two occasions when he alleges I was intoxicated occurred antecedent to my last promotion, the first occasion being in November, 1862, eight years and six months before my last promotion, and the second in the early part of 1866, four years prior to my last promotion; and therefore, under the rules prescribed for the guidance of Examining Boards, his testimony is inadmissible.

7th. I enter my protest against the consideration of the testimony of Commodore R. H. Wyman, on the ground that his declaration as to my alleged habits of intemperance are founded upon what he alleges to be well-substantiated *reports*, notwithstanding his statement that he has no personal knowledge of my habits, although knowing me for about thirty-six years, and has been a resident in the same city with me for a period of twenty years.

As the objections stated to the reception of the evidence referred to are in conformity with law and precedent, I respectfully submit the same for your consideration and favorable action.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

To the *President and Gentlemen of the Naval Examining Board,*
United States Navy, Washington, D. C.

S. N., No. 2.

NAVY DEPARTMENT, *March* 1, 1878.

Mr. PRESIDENT AND GENTLEMEN OF THE BOARD:

GENTLEMEN: In addition to my protest just read, I present the following:

I enter my protest against the answers of Commodore D. McN. Fairfax being received as evidence, on the ground that in his answer to interrogatory No. 2 the circumstances as related by him occurred prior to my last promotion.

I also protest against his answer to interrogatory No. 2 on the ground that he does not state the reason for his opinion, and also upon the fact that I have in no way been associated with Commodore Fairfax since my last promotion. His conclusions are therefore based upon hearsay testimony.

I also enter my solemn protest against the reception as testimony of the notes appended to his answers to interrogatories alleging to state the substance of a conversation with Commodore Winslow, long since dead, and said to have occurred in 1870 or 1871.

I enter my protest against the reception as evidence of that part of Rear-Admiral C. R. P. Rodgers's answer to interrogatory No. 3 wherein he states that he has reason to believe he (I) is given to habits of intemperance, after his formal statement in writing to the Board that he "could give none other than hearsay testimony" and asking whether he is a "competent witness under such circumstances."

For the same reason, I object to the reception as evidence of his answers to interrogatories Nos. 7 and 8.

I also enter my protest against the reception as evidence of the answer of Rear-Admiral Poor to the interrogatory No. 3 on the ground that it is vague and based entirely upon reports or rumors.

I enter my protest against his answer to interrogatory No. 7 upon the

same grounds, and further that he does not state from whence or from whom he received his alleged information.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

S. N., No. 3.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
March 1, 1878.

GENTLEMEN OF THE BOARD: I respectfully request that the record of proceedings of Saturday last, the 23d ultimo, may be so amended as to show that at the time the Board decided to receive the record of the court-martial in my case *as evidence* I was not present, nor was I informed of this fact until Wednesday the 27th ultimo, and then not officially, and that the record of the proceedings of Saturday has never been read in my presence or hearing.

Respectfully submitted.

S. NICHOLSON.
Captain, United States Navy.

S. N., No. 4.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
March 1, 1878.

MR. PRESIDENT AND GENTLEMEN OF THE BOARD: I respectfully protest against any amendment to record of proceedings of Saturday, as far as I am concerned, unless the amendment that I have requested be acceded to by the Board, viz, that after the words "The Board then granted Captain Nicholson's request" the following be added: "And that officer thereupon withdrew, at his own volition and by permission of the President of the Board, under the belief that the evidence was closed for that day at least, and that the record of the court-martial was only to be referred to in order to assist the Board in forming their opinion."

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

S. N., No. 5.

MARCH 1, 1878—1 p. m.

GENTLEMEN: I respectfully request that the Board may adjourn until to-morrow at 10.30 a. m., to allow me to have such witnesses present that I may desire to interrogate, and to consider the testimony produced, and to decide what other witnesses I may request to be interrogated or cross-examined.

Respectfully submitted.

S. NICHOLSON.

I propose to introduce as witnesses the Hon. D. W. Voorhees, Senator from Indiana, Judge John Key, of Georgetown, D. C.

S. N., No. 6.

Interrogatories addressed to Rear-Admiral L. M. Powell, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a Board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?

Answer. From his youth.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

Answer. I do not remember that Captain Nicholson has sailed or served with me on any station or duty.

No. 3. In your association with Captain Nicholson do you or not know of your own personal knowledge of his having habits which render him unqualified for promotion, or have you reason to believe him, from your personal knowledge, given to habits of intemperance?

Answer. My association with Captain Nicholson has been of a society character, and I have never seen any evidence of intemperance. I have no reason, from my own knowledge, to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

Answer. I have a very high opinion of Captain Nicholson's general intelligence and capacity. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

Answer the same as to interrogatory No. 2.

No. 6. Would you, as commander of a squadron, have sufficient confidence in Capt. Somerville Nicholson to send him on an important separate service in command of a vessel of war?

Answer. If I was in command of a squadron and Captain Nicholson serving under my command I could determine what I would do in the premises. From my personal knowledge I know of nothing that would forbid it.

No. 7. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

Answer. Mentally, certainly; morally, so far as I know; and professionally, answered as above to interrogatory No. 2.

L. M. POWELL,
Rear-Admiral United States Navy.

Subscribed and sworn to before me, this 2d March, 1878.

[L. S.] JAMES C. DULIN,
Justice of the Peace.

S. N., No. 7.

WASHINGTON, D. C., *March* 5, 1878.

GENTLEMEN: Believing that the judgment in my case, as prescribed by the law pursuant to which you are acting, will be determined without prejudice, and in conformity with the law, precedent, and justice, I

submit for your consideration, as the evidence has been closed, the record in support of my application for promotion to the grade of Commodore, confidently believing that after duly weighing the same, it will be found I have fully proven that I am "mentally, morally, and professionally" fitted to discharge all the duties pertaining to that position, and to which I am entitled upon every principle of law and justice.

Presuming that my mental and professional fitness for promotion has been fully established to your satisfaction, the only question involved for your determination is that of alleged intemperate habits which unfit me for the promotion to which I am entitled, and as it is so momentous in its effect upon my future life and that of my family, carrying with it, on the one hand, for the residue of my official life, which at best is but a brief one, a reputation without stigma, and to be left to my children as a heritage more valuable than gold; and, on the other, attaching to me a moral stain which will injuriously affect me for all time in the estimation of my professional brethren, and that of the community, with whom I have been identified from my childhood, and which will act as a professional and social ban, and be a reproach and disgrace to me and all who bear my name, it is necessary, therefore, that I should present for your consideration a sworn statement in support of my claim for promotion (and which is to be a part of this record), and respectfully request your careful attention to the same.

The authority of this Board is derived through section 1496, Revised Statutes, which prescribes that "No line officer below the grade of Commodore, and no officer not of the line, shall be promoted to a higher grade on the active list of the Navy, until his mental, moral, and professional fitness to perform all his duties at sea in a higher grade have been established to the satisfaction of a board of examining officers appointed by the President."

As the President of the United States, under the law, is alone authorized to appoint the Board, he, by virtue of his prerogative, prescribes the rules and regulations for its government; and when promulgated they become a part of the law, and as binding upon the conscience of its members as any portion of its provisions.

The rules as prescribed by the President through the honorable Secretary of the Navy, declare that "no fact which occurred prior to the last examination of the candidate must for any purpose be inquired into, or considered in any case; and the record must show, as fully as may be practicable, everything which assisted the Board in forming its opinion"; and, further, that "no such interrogatory, nor any question to any witnees, shall, without the consent of the candidate, refer to a time prior to his last promotion; nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank"; and as your organization is based upon the rules referred to, every part thereof is equally binding on every member of the Board, without qualification or discretion.

Section 1502 provides that "any matter on the files and records of the Navy Department touching each case which may in the opinion of the Board be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President for his approval or disapproval of the finding"; and section 1503 prescribes that "no officer shall be rejected until after such public examination of himself and of the records of the Navy Department in his case, unless he fails (after having been duly notified) to appear before said Board."

The functions of the Examining Board are of a judicial character, and must adopt as a rule of action for its guidance the principles of law in

their relations to evidence, which govern courts of inquiry and similar military tribunals as prescribed by the statute. It is to receive the sworn testimony of witnesses and duly examine and weigh the same, throwing out that which is irrelevant or of a hearsay character, or mere general impressions of witnesses founded upon the opinions of others affecting the character of the applicant for promotion, as also any testimony bearing upon the character of the officer relating to a period of time prior to the date of his last promotion; and only to consider that proof which is direct and derived from an actual personal knowledge of the matters and things sworn to; and, then, after the judgment of the Board, as prescribed by section 1502, is rendered, to submit the same with the record, to the President for his approval or disapproval.

The judgment or sentence referred to in the law can only be reached after a careful, unbiased examination of the legal evidence presented to the Board for its consideration. Each member who is acting under the solemnity of his oath is to do impartial justice, divesting his mind and conscience of every personal feeling or of opinions formed outside of the evidence, and should not permit any private knowledge to influence his judgment in the case, as the members are sworn to do strict and impartial justice in the premises.

Having thus referred to the law organizing this Board, the rules prescribed for its guidance, its functions, the nature of the evidence to be considered, and the force and effect of its judgment and how reached, I will now refer in detail to the nature of the evidence which has been procured by the Board reflecting upon my moral character, and which it is believed is the most searching in the history of the service, so far as the number of witnesses is concerned who have been called upon to testify in my case, comprising a total of thirty-two officers of the Navy, two general officers of the Army, and five civilians, making a total of thirty-nine witnesses. Of the officers of the Navy, there were four of them rear-admirals, now comprising the active list. Three others of them are on foreign service, and two of that number are now sitting as judges in my case.

Of the number of admirals on the retired list, thirty-six, thirteen have been called upon to testify in my case, comprising, with the exception of one, all who are now residents of this city. Of the number of commodores on the active list, twenty-three, fifteen have been called upon as witnesses, and including those who have been members of the preceding Board, and of those who are members of this, leaves but three to whom interrogatories have not been sent. I refer to this fact not as an objection, as I cheerfully invite the most thorough and searching scrutiny in relation to every fact and circumstance bearing upon my *present* mental, moral, and professional character and fitness for promotion, but to show that the scope and extent of the examination of my case is an *exceptional one*, as will be verified by the records of the department.

As the record of the proceedings of the first Board in my case is now before you, and has been received by you as evidence, and which led to the expression of an opinion on the part of *two* of its members, after the reconsideration of that testimony upon the points of exception taken to the findings of that Board by the honorable Secretary of the Navy; that their judgment was in conflict with the weight of proof in my favor: "that while I was, in a *high degree*, mentally and professionally fitted for promotion, I had failed to prove that I was morally so."

It is believed, after a careful and dispassionate consideration of that

evidence, that the ruling of the majority of that Board was in direct conflict with the weight of testimony bearing upon my moral character, and that the preponderance of proof in my favor *alone* should have influenced their action in determining my case.

This was the conclusion of *one* of the members of the Board upon the reconsideration of the case, who found that the weight of evidence was in every way in my support, and that mere *opinions*, founded on *hearsay* declarations, and relating to a period of time *prior* to the date of my last promotion, in June, 1870, and which were unsustained by proof, would work great injury and be in violation of every principle of law and justice, if permitted to influence the mind and conscience of those who were to sit as impartial judges in my case, and therefore, agreeably to his convictions of duty, decided that "I *was* mentally, morally, and professionally qualified for promotion."

Determining my case, therefore, from that standpoint, I fully proved by the weight of testimony bearing upon the question, that I was morally fitted for promotion, and no other conclusion could have been reached after comparing the evidence in support of that fact and of that against me, as it is shown that the former in every way preponderated in my favor. This was the conclusion reached by the Hon. Secretary of the Navy, an able lawyer, after a careful examination in detail of all the evidence in the case, as also by the President of the United States, who, under the law, is called upon to approve or disapprove the finding of the Board, he not only having concurrent jurisdiction with the Board, but also supervisory power; who, upon an investigation as a lawyer, as well as judge, of that evidence and of the law applicable thereto, *disapproved* the finding of the two members of the late Board, and by that act declared that the evidence clearly proved that I *was* mentally, morally, and professionally qualified for promotion. In this connection it is necessary that I should read, for the information of this Board, the statements prepared by me for the consideration of your predecessors, in which I refer to the evidence upon which the judgment referred to was rendered. The additional sworn statements which have been procured by this Board, affecting my moral character, are almost identical with those before the first Board, and are not based upon *personal* knowledge, but are principally hearsay, and relate to a period of time *prior* to my last promotion (June, 1870); and therefore, agreeably to the rules of evidence and principles of law, which should govern your action, and in conformity with the ruling of the President of the United States in his disapproval of the judgment of the first Board, are inadmissible, and therefore cannot be considered by you.

In my protest marked S. N., No. 1, dated March 1, 1878, against the consideration of hearsay evidence, I referred to the fact that it was ignored by all tribunals, civil and military, and referred to the authorities upon the subject, for the information of the Board.

As the question is most important in its bearing upon my case, I will again read that protest, and as it embraces exceptions to the testimony of various other witnesses, it will save me the time of again referring to the same in this statement.

In addition to the authority referred to in the protest which I have just read, marked S. N., No. 2, as to the inadmissibility of hearsay evidence, which relates not to what the witness knows himself, but what he has heard from others, reference is requested to Starkie on Evidence, Part 1, page 44, and 1st Phillips on Evidence, page 185.

As the law governing the case will not admit of the consideration of

this evidence, the judgment of the Board, therefore, cannot be founded upon it.

Reference is also made to my protest against the consideration as *evidence* of the proceedings relating to the court-martial in my case during the month of March, 1874, which is clearly inadmissible, and can have no legal force and effect in the formation of an opinion on the part of the Board, inasmuch as the remission of the entire sentence by the President of the United States, through the Secretary of the Navy, relieved me from all *stain* of the sentence pronounced by the court, and restored me to active duty; and the legal effect of such restoration was, that as the alleged offense had been fully *condoned*, and that as my disability was removed, I stood in the eye of the law as though no offense had been committed, and was therefore qualified and placed in a position to discharge my duties as a captain in the Navy, as well as those pertaining to a higher grade.*

The effect, therefore, of the pardon or remission of the sentence of the court being to restore me to all the rights I possessed prior to the proceedings of the court-martial, it is beyond the province of this Board to array against me those proceedings, and permit the same to bias its judgment in forming a conclusion in this case. The law does not permit a *second punishment* for the same offense; and as the effect of the proposed action of this Board in admitting as evidence those proceedings would be to produce this result, it would be repugnant to every principle of law and justice; and I cannot believe, for the reasons stated, that this Board, upon reflection, will entertain any such purpose, as it would not only be an act of great wrong, but in direct conflict with the expressed opinion of the President of the United States, who was familiar with the facts relating to my case, as embraced in these very proceedings.

It is necessary to state in this connection, that on Saturday, the 23d ultimo, when I appeared before the Board, I stated my willingness to submit my case upon the evidence of the record of the proceedings of the first Board, the same having been read in my presence and in the presence of the Board, provided the Board had no further testimony to produce, and requested until Monday, the 25th, at 10.30 a. m., to present my final statement; which was granted me (see record of proceedings), and I left the Board, under the impression that no further testimony would be introduced.

On Monday morning, the 25th ultimo, in obedience to instructions, I duly presented myself to the Board, but was not admitted, and after remaining about four hours, expecting every moment to be called upon to present my statement, I was informed by the Recorder that the President of the Board had directed him to notify me that my presence would not be required until Wednesday, the 27th ultimo, as additional interrogatories would be sent out in my case, and to my astonishment I ascertained that the record of the court-martial in my case had been read and admitted as *evidence*.

On appearing before the Board on Wednesday, the 27th ultimo, the proceedings of Monday, the 25th ultimo, were read, but those of Saturday, the 23d ultimo, were omitted, never having been read in my presence. I found, however, unofficially, upon an examination of the proceedings of Saturday, the 23d, that the record of the proceedings of the court-martial referred to had been admitted to record *as evidence against* me. As sections 1500 and 1503, Revised Statutes, prescribe that

* See opinion of Judge-Advocate-General Holt, bearing upon this question, embraced in my statement.

the officer whose case is to be acted upon shall have the right to be *present* when the records of the Navy Department, affecting his case, are examined; and as said records were examined, not publicly, as the law provides, and in *my presence*, I contend that such action is null and void, and the record, therefore, to the extent of any reference to the proceedings of the court-martial, must be expunged.

I will now proceed to comment upon the evidence now before you, bearing upon the question of *alleged* intemperate habits, embracing objections to the testimony of those officers which are not referred to in my protest of the 1st.

As to the testimony of Admiral C. R. P. Rodgers, who states in his letter to this Board, in relation to the very searching interrogatories sent to him, that he can give no other than *hearsay testimony* as to any *alleged* irregularity on my part, and requests therefore to know whether, under such circumstances, he is a *competent witness*, he stating that he has not been upon duty with me for more than fifteen years, I protest against the admission of his declarations as to alleged intemperate habits, on the ground that they are in their nature made under duress and contrary to his convictions of law and justice, and after a virtual protest on his part against making them. He states we were messmates on the Coast Survey for a year or two, when I performed my duties in a most efficient and exemplary manner, and served with me for a short time in the South Atlantic squadron, but saw very little of me. He states, in answer to No. 3, that when we were messmates my habits were exemplary; since then he has *reason to believe* I am given to habits of intemperance. He states no reason inducing such an allegation nor authority for such a declaration; and as he admits that his testimony is simply *hearsay* and not founded upon personal knowledge, his testimony relating to alleged habits of intemperance is illegal and therefore inadmissible.

2d. I protest against the testimony of Commodore R. H. Wyman, who alleges that he has known me for about thirty-six years, but has no personal knowledge of any habits which would disqualify me for promotion. He states, however, that well-substantiated report accuses me of intemperance when in command. As this declaration is made upon mere hearsay, and does not specify from whom or how such information is received, it is inadmissible, and therefore should not be considered by this Board.

3d. I protest against the admission of the testimony of Admiral Daniel Ammen, who swears that he has known me for twenty years or more, but has never served with me. He states that I visted the iron-clad Patapsco in November, 1862, when he commanded her, and I took passage in her from Wilmington to Philadelphia, and on that occasion I was *unmistakably intoxicated*. He further states that I visited the iron-clad Miantonomoh in Washington in the early part of 1866, when I was also *unmistakably intoxicated*. I object to his testimony for the reason that it is entirely without proof; and upon the principle of "*falsus in uno, falsus in omnibus*," it should be utterly disregarded. I desire to state that in November, 1862, as I shall prove by the records of the department and by the log-book of the United States steamer Marblehead, I was in command of the latter vessel off Charleston, on blockading duty, and as I will show by one of the members of this Board now present that from some time in August, 1862, until about the 20th of December of the same year, and assert distinctly that I was never north of the latitude of Cape Henry, Virginia, from April the --

until about December 20, 1862, on my passage home from Charleston, arriving in Washington December 25, 1862.

And I now further state, upon my honor as an officer and a gentleman, that I have never met Admiral Ammen when he was in command of or on duty aboard of any vessel of the Navy, with the exception, when I paid him a social visit on board the Miantonomoh, under his command, at the Washington navy-yard, as he has stated. On this occasion I was received with great kindness by Admiral Ammen, and accepted his hospitality, and to the best of my recollection I joined him in partaking of a few glasses of Rhine wine, which, I suppose, under the same circumstances, most officers would do. After leaving his ship I joined a party of ladies and escorted them to their homes in Washington. It is quite remarkable that this officer should at this late date bring up in array against me allegations as to intemperance, which, if sustained, were under the sanctity of his own roof, while I was his guest and partaking of his hospitality, and yet having such confidence in my mental, moral, and professional fitness as an officer, that in 1871, *five years after the date of the alleged exhibition of intemperance on my part*, and *nearly a year after the date of my promotion to my present position*, he should have such confidence in my reputation as an officer as to have invited me to accept one of the most important positions in the Navy, chief of staff of one of the largest squadrons in the Navy, as induced from the following letter received from him, the original of which I make a part of this record:

[Confidential.]

NAVY DEPARTMENT,
BUREAU OF YARDS AND DOCKS,
Washington, D. C., March 27, 1871.

MY DEAR NICHOLSON: Admiral Lee is anxious to have a chief of staff. Be good enough to let me know if you would like the position.

Very truly, yours,

DANL. AMMEN.

Capt. S. NICHOLSON, *U. S. N.*

The original of which letter is herewith presented and made part of my case.

The discovery of this letter was an accidental one, and only found on the 3d instant, and the presentation of which I regard as one of the strongest points in support of my right to promotion, inasmuch as this admission as to my character as an officer was written nearly *one year after the date of my promotion to my present position*, and under the circumstances cannot be regarded a violation of confidence.

I further object to the reception of his testimony on the ground that it relates to a time *prior* to my promotion.

4th. I protest most earnestly against the reception of the testimony of Commodore D. McN. Fairfax, for the reason that his testimony is in conflict with truth and justice, and relates to occurrences *prior* to the date of my last promotion. He swears that he has known me since 1840, thirty-eight years ago, and that during that period of time he knows nothing affecting my moral character until 1870 or 1871, when I fitted out a ship of war, the Benicia, at Portsmouth, N. H., while he was captain and executive officer of the navy-yard; and that *twice* I was prevented from attending to my duties as captain in consequence of drinking to excess, and knows from his association with me that I have habits which unfit me for promotion.

It is quite remarkable that during the period of time which he has

known me, nearly thirty-eight years, his opinion as to my unfitness for promotion should have been formed exclusively upon the two occasions when he alleges that I drank to excess.

Since 1842, with the exception of the time I was in command of the Benicia, then fitting out for sea, in the month of December, 1869, and in January, 1870, and for a few days in February, my association with him has been of a most limited character, and I have not been associated with Commodore Fairfax off duty or in any way since about March 2, 1870, when I sailed in the Benicia from Portsmouth under orders to the East Indies. The facts in the case on the two occasions referred to by Commodore Fairfax are as follows:

Soon after I took command of the Benicia, at the time mentioned, I was confined to my hotel in Portsmouth, N. H., with a violent and most painful attack of neuralgia in the head, and the only relief which I could obtain was through the use of narcotics. Some evil-disposed persons seized this opportunity to circulate reports that I was drinking to excess, and I believe the feeble mind of Commodore Fairfax induced him to credit this slanderous report, he not seeing me in this condition, and after I recovered from this attack I, at his invitation, dined with him, he offering me different kinds of ardent spirits and wines, which I accepted in a gentlemanly way, and he does not say that any excess was committed on this occasion. He has appended to the answer to the interrogatories of this Board an addenda, explanatory as to his reason *why* he failed to report me for dereliction of duty, as it was his duty to do, to the superior officer in command, by assuming to state that he made a statement, and not by report by Commodore Winslow, that I was kept away from the yard by inability brought on by drinking. If I had violated any of the obligations imposed upon me as commanding officer of a vessel, it was his duty to have reported me officially to the commanding officer of the navy-yard; and inasmuch as he failed to discharge his duty and conform to the requirements of naval law at that time, it is inconsistent with the general fitness of things and the proprieties of the case, at this *late date*, to cast reflection upon my official character; as Commodore Winslow has long since been dead, Commodore Fairfax alone is responsible; for if the charge as now made is a valid one, I would long since have been brought to trial if the charges against me could have been sustained; and I believe that in his answer to interrogatory No 2, that he willfully and deliberately places *it in* doubt as to the time I was fitting out the Benicia at Portsmouth, knowing full well that if the occurrences which he mentions took place in the *early part of* 1870, his evidence could not be received, as the sequences stated took place prior to my last promotion; but if they occurred in 1871, by the instructions from the department, the evidence could be legally acted upon.

As I have thus analyzed all the evidence adduced by your Board, affecting in any way my moral character pertaining to the question of intemperance, I will now proceed to present for your consideration and thorough deliberation the evidence of other witnesses introduced by the Board, as well as those that I have introduced, in support of my moral character, in its appreciation to the question of intemperate habits; which question, it is believed, is the only one before you for consideration, and which will, I trust, after a careful and unbiased consideration of the question involved, induce the conclusion on your part that I am not only mentally and professionally, but unqualifiedly morally fitted for the promotion which I now am entitled to, as the weight of evidence proving the fact largely preponderates in my favor, and

which should be binding upon the conscience of this Board in the conclusion which it may reach in my case.

1st. The testimony of Admiral Almy, who states unqualifiedly that he knows nothing, after an association of many years with me, which officially and unofficially affects my reputation, or which would disqualify me for the promotion I now seek.

2d. The testimony of Rear-Admiral C. H. Poor, who swears that he has known me for many years, and considers me morally and professionally, in the general acception of the term, as fully qualified for promotion.

3d. The testimony of Admiral F. Stanly, who states that he has known me for fifteen years, and that I am mentally, morally, and professionally fitted for promotion.

4th. The testimony of Rear-Admiral L. M. Powell, who swears that he has known me from my youth, and that he has reason to believe that I am not given to habits of intemperance, and that I am mentally, and *certainly* morally and professionally fitted for promotion.

5th. The testimony of Rear-Admiral B. F. Sands, who swears that he has known me since I was a lieutenant, and that he believes that I am professionally, mentally, and morally fitted to the promotion to which I am entitled.

6th. The testimony of Admiral S. P. Lee, who swears that he has known me since the beginning of the late civil war, a period of more than seventeen years, and during that period of time, when I was under his command during the late war, and rendered most efficient and gallant service during a period of two years, and within that time saw me but once under the influence of liquor; and in answer to interrogatory No. 7, states that if the main feature in the service required was gallant conduct he would place me in such command, and so far as his knowledge of my mental, moral, and professional status is concerned I am entitled to promotion.

7th. The testimony of Admiral W. Reynolds, who swears that he has known me thirty-one years, and has served with me during a period of that time, but does not know that I have habits which disqualify me for promotion, and that my reputation as an officer and a gentleman is excellent.

8th. The testimony of Admiral T. A. Jenkins, an officer of prominence in the service, and who from association with his fellow-officers was in a position to acquire a general knowledge as to my moral character, who has known me for a period of many years, and who has lived in the same community with myself and family for twenty years or more, swears that *he has no knowledge* which would unfit me morally, mentally, and professionally for promotion.

9th. The testimony of Commodore J. C. Beaumont, who swears that he has known me for a period of about eighteen years, and knows nothing, of his professional knowledge, during that period of time, which would disqualify me mentally, morally, and professionally for promotion; but, on the contrary, swears unqualifiedly that I am mentally, morally, and professionally qualified for promotion.

I have thus analyzed the testimony of all the officers who have testified, not only before the first Board, but before your own, bearing upon the question of intemperate habits, which would disqualify me from command in a higher position, as also that which I have presented in rebuttal; and which, upon an impartial and considerate examination, will be found greatly preponderating in my favor, and therefore agree-

ably to the rules of evidence pursuant to which you are called upon to form your judgment.

It was never contemplated by the law organizing this Board, as induced by the closest construction which could be placed thereon, to confer upon it the power to go *beyond* the antecedents of the officer *prior* to his last promotion, the law contemplating that the fitness of the officer for promotion to the respective grades to which he was promoted *had been fully conformed to* by the rules of the service authorizing such promotion; and, therefore, it was the intention of the law not to require as to his *past*, but as to his *present condition*, the time intervening from the date of his last promotion to the time he appears before your Board for examination for promotion to a higher grade.

It was never contemplated or supposed by the framers of this law, when an officer appears before you for examination, that his status, save the *present*, should be considered by you; for if the reverse was the rule of action for your guidance, every fact and circumstance relating to his character from his first entry in the service could be arrayed against him, and I ask, therefore, with due consideration from your own personal knowledge, how many officers in the service could have obtained their promotion if this test had been applied to them? The test, therefore, is the moral status, the general character of the officer *from the date of his last promotion to the time he appears before you*, as to whether there are any acts or series of acts committed by him during that period of time which disqualify him for promotion; and, therefore, judging my case from a disinterested and unbiased stand-point, throwing aside all personal opinions or prejudices bearing thereon, outside of the evidence adduced in my favor, it will be found that upon every principle of law and of justice I am entitled to the promotion which the law confers upon me.

Independently of the evidence referred to, I feel that it is a duty to refer to that evidence, viz, of civilians, who have been identified with me almost daily for the last seven or eight years, and who are familiar with my habits and associations, who have testified as to my moral qualities, that is, as to the question of intemperate habits, and who swear to the fact that I am not addicted to such habits. The first of these is Senator D. W. Voorhees, who solemnly swears to the fact that he has known me for ten or twelve years, and knows of no habits on my part which would unfit me for promotion; he being intimately identified with me during that period of time. He further swears that if he were a large owner in a steamship company, or the owner of a large vessel with a valuable cargo, he would, based upon his own personal knowledge, and of my high reputation as officer, trust me with the command of such vessel, even if it contained his wife and children, a more precious charge than any other cargo which could be placed under his (my) control.

I also refer to the testimony of Judge John J. Key, who has known me intimately since 1873, and has known me as a neighbor, socially and intimately, since that period of time, and has heard of me by reputation since 1862, who swears that I am not addicted to habits of intemperance, but that I enjoy in a high degree a moral and exemplary reputation; and in this connection reference is particularly requested to his testimony in detail.

I have thus concluded the analysis of the testimony before the first Board and that of your own, and desire to state in conclusion, that in no sense can the authority of this Board include the province or the authority of a court-martial, so as to punish, suspend, or deprive an officer of pro-

motion on account of any wrong act or conduct on his part, as it would be in conflict with the sixth section of the act of July 15, 1870, section 1456 Revised Statutes, which prescribes "that no officer of the Navy shall be placed on the retired-list because of misconduct; but he shall be brought to trial by court-martial for such misconduct;" and in this connection, bearing upon the scope and authority of Examining Boards, I desire to read for the information of the Board two decisions rendered by the Navy Department, one of date April 28, 1873, and one of February 25, 1874, bearing upon the subject, the correctness of which will be verified by reference to the Recorder, who has the originals in his possession. These opinions are not alone of the department, but emanate directly from the President of the United States through the Secretary of the Navy, who, under the law, has the exclusive authority to appoint Examining Boards, to prescribe the rules for their guidance, and to define the rules of law applicable thereto, as also to dissent from their conclusions.

Having thus concluded my final statement, I cheerfully submit it for your consideration, believing that your judgment will be strictly impartial and in conformity with law and justice.

Respectfully submitted.

S. NICHOLSON,
Captain United States Navy.

To the *President and Gentlemen of the Naval Examining Board,*
Washington, D. C.

Subscribed and sworn to before me this 5th day of March, A. D. 1878.

JAMES C. DULIN,
Justice of the Peace.

NAVY DEPARTMENT,
Washington, February 25, 1874.

SIR: The record of proceedings of the Naval Examining Board in the case of Capt. William Ronckendorff are referred back to the Board.

I have carefully read and considered the testimony, record, and answers in this case, and am constrained to say that the effect of these seems to me to be wholly insufficient to warrant an affirmative conclusion against Captain Ronckendorff upon a point the substantial decision of which, however carefully avoided in language, cannot fail to be understood as deciding his case and as seriously affecting his personal and professional standing.

The single incident referred to by Admiral Bailey is uncertain in character and most imperfect in details, and its real nature, it seems to me, is fairly revealed by the fact that it passed, during the long interval since its occurrence, entirely unacted upon, unnoticed, unremarked, and even unremembered with the present occasion.

All the other testimony adverse to Captain Ronckendorff, shown on the record, consists of the general and inferential opinions of one or two officers, founded in part, perhaps, upon the incident apove referred to, and certainly overborne by the weight of favorable testimony in the case.

Under these circumstances, although the Secretary has no power to constrain the action of the Board in this or any other case, and certainly has no desire to influence their decision without convincing their

judgment, he feels it to be his duty to so refer the case to them for further examination.

Respectfully,

GEO. M. ROBESON,
Secretary of Navy.

Addressed to Commodore WM. E. LEROY,
President Naval Examining Board,
Washington, D. C.

NAVY DEPARTMENT,
April 28, 1873.

SIR: The record of examination and the case of Captain Clitz is rereferred to the Examining Board, with the remark that the formal finding of the Board, signed by all the members, is, in the opinion of the Secretary, wholly contradicted and nullified by the recommendation and expression of opinion which follows it, signed by a majority of the Board. This Board is in no sense a court-martial, and has no power to *punish or suspend or deprive an officer of promotion* on account of any wrong act or conduct on his part; this is not only clear on principle, but it is expressly confirmed by the effect of the sixth section of the act of July 15, 1870 (1456).

The power of the Board consists in finding whether an officer, not because he has or has not done any particular thing, but by reason of the condition of his mental, moral, and professional character, resulting from having done or not done certain things, has or has not, as a quality, condition, or habit, the mental, moral, and professional fitness required to perform the regular duties of the grade to which he is to be promoted.

Particular acts or conduct are only material, in this consideration, to the extent that they go to evidence the mental, moral, or professional quality, condition, or habit which possesses and make the past of the individual. Thus, particular instances of intemperance, however glaring and unjustifiable, are to be considered by the Board *not* in their *criminal* light for the punishment, or for the purpose of saying whether or not the officer committing them deserves promotion, but only to the extent that they make or evidence a *condition of character of habitual drunkenness;* and certainly no Board can properly say that an officer is *not* morally qualified by reason of a habit of intemperance; and it is the condition of his character and *not his particular act* that they must find and act upon, when, at the same time, a majority of the Board declares that, in their opinion, he is an efficient officer, and that, in their belief, he is not *habitually* an intemperate man. This is the condition of the recommendations of this case; and, while the Secretary cannot consider this a recommendation for promotion, he certainly cannot approve the recommendation of the Board, founded in fact for its legal support by a finding by the Board that the officer is habitually intemperate, when a majority of the Board declare expressly that they do not think he has that habit.

In regard to the testimony of junior officers, the Secretary is of opinion it would be better that juniors should be asked in the future to send facts only.

If the Board think that Captain Clitz has been guilty of particular acts of intemperance, though they do not think him habitually intemperate, the department, on this appearing, can order a court-martial to

investigate and punish these offenses; and any officer having knowledge of such instances should have reported them to the department for judicial investigation according to law, and not merely make them the foundation of an opinion given in a case when particular acts are not to be investigated.

Respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Addressed to Rear-Admiral JOHN RODGERS,
President of Naval Examining Board.

S. N., No. 8.

I object to the testimony of Admiral Selfridge, who alone pretends to charge me with being in any degree under the influence of liquor during the years that have elapsed since my last promotion. This officer (with the exception of a few months) has been a resident of Georgetown, in this District, where I live, and has been my near neighbor most of this time, meeting almost daily. He testifies that he has seen me partially inebriated once or twice—once in a horse-car in 1877; but cannot testify as to either time or place in regard to the other instance.

In my opinion such testimony is too vague and indefinite to be received, as it is a rule of law that all legal testimony must be sufficiently clear and definite to admit of proper defense.

I must, therefore, object to the reception of this testimony; and, furthermore, I believe I could justly object on the ground that he is an interested witness, having two sons in the Navy junior in rank to me, who would be benefited by my retirement.

S. N., No. 9.

EBBITT HOUSE,
Washington, D. C., March 10, 1875.

MY DEAR SIR: Since my return from the command of the South Atlantic station I have learned that there was some question about your attention to the repairs of the flag-ship Lancaster, of the Brazil squadron, while you were in command of her.

It affords me great pleasure to be able to state that while the Lancaster was under repairs at Rio de Janerio you gave your whole attention to the work going on day and night. You did all in your power to see that the work was well done, and done as expeditiously as possible. I do not think that you were out of the ship at any time for two hours. No officer could have done, under the circumstances, more for the interest of the government than you did.

I send you this letter, feeling it a duty as your commanding-officer at the time.

Very respectfully,

J. H. STRONG,
Rear-Admiral, United States Navy.

Capt. S. NICHOLSON.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 90.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of May 15, 1878, *information in relation to the appraisal of property belonging to Michael Fentenheime, at Pelican Point, Morris Island, South Carolina.*

MAY 29, 1878.—Referred to the Committee on Claims and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 28, 1878.

The Secretary of War has the honor to report to the United States Senate, in compliance with Senate resolution dated the 15th instant, directing that "a just appraisal be made of the value of the property of Michael Fentenheime, at Pelican Point, Morris Island, in the State of South Carolina, when the same was taken by the United States for the purpose of a permanent fortification," and that "the same, together with the facts and circumstances attending such taking be reported to the Senate," that this claim has been referred to this department heretofore for report—

1. By letter of Cornelius J. Vanderbilt, dated October 24, 1873, which being referred to Maj. (now Lieut. Col.) Q. A. Gillmore, was returned with an indorsement of which the accompanying paper marked A is a copy.

2. By letter of Hosmer & Co., attorneys for William Richards, dated March 9, 1875, which having been referred to Lieut. Col. Q. A. Gillmore, was returned with a report of which the accompanying paper marked B is a copy.

Lieutenant-Colonel Gillmore, at the time when the alleged damage is said to have been done, was in command of the United States forces on Morris Island, being a major-general of volunteers.

No evidence has been presented to show that the claimant was a resident of or that he held any legal title to property on Morris Island, South Carolina.

GEO. W. MCCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

A.

UNITED STATES ENGINEER OFFICE,
New York, November 3, 1873.

Respectfully returned to the Chief of Engineers, United States Army.

The United States, under a grant from the State of South Carolina in 1790, own the southern portion of Morris Island, the part then known as Middle Bay Island, which comprises about one-third of the island as it now exists.

The State of South Carolina owns a portion now devoted to quarantine purposes, which amounted to 20 acres when purchased in 1833.

The island was captured by the United States troops, the southern portion in July, and the rest in September, in the year 1863, and was occupied until the close of the war. The fortifications and batteries which had been constructed by the Confederates were considerably modified by the United States troops, and additional batteries erected for the reduction of the Confederate defenses on the north end of the island, and for the bombardment of Fort Sumter.

During the year succeeding the close of the civil war, the armament of the several works on the island was either removed by the United States officers, or sold at auction, and there has been no occupation of the island by any branch of the War Department since that time, that I am aware of.

Two range beacons were erected by the Light-House Bureau on the southern portion of the island a few years ago.

Morris Island is a narrow strip of barren sand, containing no vegetation and no arable land.

Its occupation during the civil war caused no damage to private property.

Q. A. GILLMORE,
Major of Engineers, Brevet Major-General United States Army.

B.

UNITED STATES ENGINEER OFFICE,
New York, May 24, 1875.

GENERAL: I have the honor to return herewith the letter of Hosmer & Co. and William Richards, attorneys, to the Hon. Secretary of War, asking if Mr. Michael Fentenheime can be compensated for use of a building and land on Morris Island, South Carolina, alleged to have been taken possession of by the United States military authorities in 1863, and retained by the government to this time.

I have caused exhaustive inquiries to be made in Charleston, and have been unable to find any one who ever knew Mr. Fentenheime.

The only buildings known to have been in existence on Morris Island as late as 1861, so far as I have been able to learn, were two houses belonging to Mr. Seibling, the residence of Mr. Vincent, the lazaretto, and the house of the keeper of the latter.

In that year the sea had encroached upon the island to such an extent that the foundation of Mr. Vincent's house was submerged at high water. The sites of all the rest of the buildings named have since been washed away.

The houses which were standing at the beginning of the war were used as storehouses by the Confederates, and all but one were removed by them when they began to fortify the island. This one, the house of the keeper of the lazaretto, known to us as the Beacon House, remained until the siege of Fort Wagner, when it was riddled with shot.

There has been no military occupation of Morris Island that I am aware of since the year succeeding the close of the war.

I have been unable to obtain any evidence that Mr. Fentenheime owned any property on Morris Island, and it is certain that he had no residence there when the island was occupied by the United States forces in 1863.

If Mr. Fentenheime has a deed to the property, showing its location on the island, he should be required to submit it, before according to his claim any further consideration.

Very respectfully, your obedient servant,

Q. A. GILLMORE,
Lieut. Col. of Engineers, Bvt. Maj. Gen. U. S. Army.

Brig. Gen. A. A. HUMPHREYS,
Chief of Engineers U. S. A., Washington, D. C.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 91.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of May 16, 1878, *information in relation to alleged discrepancies in the claim of Thomas Worthington.*

MAY 31, 1878.—Ordered to lie on the table and be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., May 29, 1878.

SIR: In compliance with the resolution of the Senate of the 16th instant, as follows:

Resolved, That the Secretary of the Treasury inform the Senate as to what discrepancies, if any exist, to the prejudice of Worthington's claim between the Third Auditor's report of March 20, 1876, and March 20, 1877, and his statement of February 21, 1876, including the Third Auditor's reports on the claim of March 9, 1867, January 31, 1870, and March 25, 1870, with inclosures on the same, and with the reasons for said discrepancies, if any such exist.

I have the honor to submit the following statements of the accounting officers of the Treasury through whose officers Mr. Worthington's claim was settled.

The Third Auditor states that the only "discrepancy" he has been able ever to find was that, after deciding that Colonel Worthington was not entitled to anything more than had already been paid him, the accounting officers made him a further allowance of $1,823 in March, 1869.

The Second Comptroller forwards a specification of the alleged discrepancies furnished by the claimant, and states that as the existence, or non-existence of said discrepancies, and their extent and character, if any exist, are matters that can be judged of solely by comparison of the reports referred to, and cannot be divested of doubt or conclusively settled by any decision that can be made in this Department, copies of the respective documents referred to in the resolution are transmitted herewith as the only means of furnishing the information required.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. WILLIAM A. WHEELER,
President of the Senate.

STATEMENT OF DISCREPANCIES IN THIRD AUDITOR'S REPORT OF MARCH 20, 1876, AND MARCH 20, 1877, CALLED FOR BY SENATE RESOLUTION OF MAY 17, 1878.

The Senate resolution of inquiry, May 12, 1878, calls for discrepancies, if any, between the Third Auditor's report of March 20, 1876 and 1877, and certain reports on Worthington's case, as follows:

1st. His statement of February 21, 1876 (*i. e.*, Third Auditor Austin's).

2d. Third Auditor's report of March 9, 1867.

3d. Third Auditor's report of January 31, 1870.

4th. Third Auditor's report of March 25, 1870 (to General Schenck).

The report of March 20, 1876, states that the second item of worthington's claim for increased hauling was paid by the award of $3,444, made March 12, 1867, and that the third item for damages was paid by the second of March 6, 1869.

The discrepancy between the report of March 20, 1876, and the statement February 21, 1876, consists in the two facts following:

1st. That by an indorsement February 21, 1876, on a copy of the Third Auditor's report of March 9, 1869, signed A. M. Gangewer, it is plain that the award of $3,444 was for an increased supply of water over his quartermaster's contract.

2d. That the report of January 31, referred to in the indorsement, proves that the second item for increased haul was never considered for want of jurisdiction, and therefore never paid, as stated March 20, 1876.

The discrepancy between the report of March 20, 1876, and January 31, 1870, consists in the last above-stated fact, and the further proof that by the Second Comptroller's indorsement of March 12, 1870, the whole claim (second item) was then a claim for unliquidated, *i. e.*, unpaid damages, jurisdiction as to which was confined to Congress or the Court of Claims, showing nothing had been paid on items two and three then.

The discrepancy between the reports of March 20, 1876, and March 9, 1867, consists in the fact that by the last report the *impediments* or obstructions thrown in the way of the contractor, sounding in damages were not within the jurisdiction of the accounting officers, and the additional fact that the award of $3,444 was for an increased supply of water, which, according to contract, should have been paid in June, 1861. (See Auditor's report July 19, 1869.)

The discrepancy between the report of March 20, 1876, and the report or letter of Acting Auditor Gangewer, March 25, 1870, consists in the fact that the last report or letter declares that "of course nothing had been paid for damages" (as claimed by the report of March 20, 1876), as the matter rested alone with Congress.

It may properly here be stated that in 1869, as now, when fictitious payments were introduced, the report of January 19, 1869, had introduced a fictitious contract, by which the rate was increased on the 31st May, 1861, from 15 cents to 40 cents, thus stating a payment of about $1,215 never made. To make the report correct, the amount of $1,215 had to be paid, with the addition of $540 for 25 cents per 100 gallons additional on 216,000 delivered from 20th to 31st May, under agreement of May 16, 1861, signed at Cincinnati.

The award of $1,823 was intended to have been an award of 25 cents per 100 gallons on all the water paid for at 15 cents on receipt of the substantial abrogation of the contract by the government, &c., and out-

side of all previous payments whatever, and the amount would then have stood as follows, and balance paid accordingly :

The United States to T. Worthington, Dr.

For 220,200 gallons water, at 40 cents per 100 gallons	$8,808 00
Paid at Cincinnati $257; at Washington, $3,444+1,323	7,838 00
Balance due on water, at 40 cents per 100 gallons	970 00

There was a partial payment on 200,000 gallons, of $40, made in 1863 on approval of General McClellan, which is however part of the $970, having been deducted March, 1869.

Respectfully submitted.

T. WORTHINGTON.

Hon. —— UPTON,
Second Comptroller.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
Washington, D. C., March 20, 1876.

SIR: The application of Col. Thomas Worthington, of Ohio, to reopen his claim against the government (No. 13469) having been referred by the Secretary of the Treasury to the Third Auditor for report, I have to say that I have personally made a careful investigation into the merits of the application. The claim is for furnishing water to the government troops at Camp Dennison, Ohio, in 1861. The contractor, Colonel Worthington, received from the military officers $2,971, and deeming this insufficient, in 1867 he applied to this department for a further allowance, on the ground that he had been compelled by the military authorities to deliver a greater amount of water than required of him by the terms of the contract, and that he had been compelled to haul it about *three times the distance* contemplated by the parties at the date of the original contract.

On the 12th of March, 1867, the accounting officers awarded him $3,444 in addition to the sum theretofore paid him by the military, and in so doing took into account the extra quantity furnished and the "increased haul"; and in consideration of these two facts advanced the price upon the amount of water hauled in excess of 1½ gallons per man per day (the quantity prescribed in one clause of the original contract) from 15 cents per 100 gallons (the consideration stipulated in the original contract) to 40 cents per 100 gallons. This award was paid.

In 1869 Colonel Worthington comes again and makes a further claim, but upon what grounds does not very definitely appear.

But after twice refusing any further allowance the accounting-officers seem to have been prevailed upon, while their objections remained unanswered, to again come to his relief. They placed the new award upon the most plausible pretext they could find, to wit, that a portion of the water delivered and previously paid for at only 15 cents per 100 gallons might, in view of all the impediments thrown in the way of the contractor by the military (together with extrinsic circumstances which appealed strongly to the liberality of the government in favor of Colonel Worthington) be paid for at the rate of 40 cents per 100 gallons, and as a consequence paid him $1,823 more.

The accompanying argument of General Mason, who appears for Colonel Worthington in this his application for a third allowance on the same state of facts, assumes that the allowances heretofore granted have had reference to the amount of water delivered in excess of the quantity required by the terms of the original contract and to such excess *only*, but this is an error, as will readily be seen from reading the awards (herewith sent) of the Auditor for both allowances, as well as the reasons repeatedly given by him why no allowances in addition to his first award should be made to Colonel Worthington. Indeed, the additional quantity of water supplied without reference to the greater distance hauled, could constitute no reason for advancing the price per hundred gallons, unless the laws of "wholesale and retail" have thus far in the world's history been misunderstood and misapplied.

There has been paid the contractor:

By the military	$2,971
By the Treasury, $3,444.00 + $1,823.00	5,267
Total	8,238

It would appear that apologies for opening the case and making a further award have been exhausted, however well Colonel Worthington may deserve of his country.

Very respectfully submitted.

HORACE AUSTIN,
Third Auditor.

Hon. B. H. BRISTOW,
Secretary of the Treasury.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
Washington, D. C., March 20, 1877.

SIR: I respectfully return the papers presented to you by Mr. Thomas Worthington, and referred by you to me on 19th instant.

The many investigations and reinvestigations had upon his claim since the last settlement, made in March, 1869, have reached one and the same result, viz, that he has been paid at least every dollar due him, even upon his own construction of the contract and his own assertions of the quantities of water furnished. In my judgment, a time has now arrived when this department should peremptorily refuse to devote to this case time which can illy be spared from more legitimate duties.

I respectfully refer you to the opinions given to the Secretary of the Treasury by the Comptroller on the 5th May, 1876, and by myself on 20th March, 1876. I see no reason to modify my opinion.

I herewith transmit all the papers pertaining to his claim.

Very respectfully, your obedient servant,

HORACE AUSTIN,
Auditor.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

This finding of the Auditor is conclusive, and I have not the power to open it. Colonel Worthington must appeal to Congress.

JOHN SHERMAN.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
Washington, D. C., February 21, 1876.

SIR: In compliance with request in your letter of 8th instant, I have the honor to transmit herewith copy of the report in the claim of Thomas Worthington, dated March 9, 1867. You will see by indorsements on the copy inclosed that two settlements in favor of Mr. Worthington have been made since the date of this report. The originals of all the papers were sent to Hon. A. I. Boreman, United States Senator and member of the Committee on Claims, on 27th of February, 1874, and were by him returned to this office.

I also inclose copy of the letter to Senator Boreman transmitting the papers in the claim.

Very respectfully,

HORACE AUSTIN,
Auditor.

Hon. JOHN SAVAGE,
House of Representatives.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
March 9, 1867.

SIR: I have the honor to transmit herewith the papers in the claim of Col. T. Worthington for furnishing the troops at Camp Dennison, Ohio, an additional supply of water, and from a greater distance than stipulated in his contract, for your consideration and decision.

The Quartermaster-General, transmitting the case to this office on the 4th of January, 1867, requests that an account be stated in accordance with the legal rights and obligations under the contract and the facts, and report the same to the Comptroller for settlement.

The original contract is not on file with the papers, but it appears that in response to a publication by Capt. J. A. Dickerson, assistant quartermaster, inviting proposals for supplying the camp aforesaid with water, claimant entered into a contract with him to furnish 1½ gallons per man per day (the camp estimated at from 12,000 to 18,000 men) at the rate of 15 cents per 100 gallons.

The rates of delivery, it seems, were based upon the supply being furnished by a steam-engine and pipes, from the nearest point in the river, a distance of about two-fifths of a mile from the center of the camp.

About the time claimant commenced fulfilling his contract, government erected a slaughter-house on the bank of the river, about a mile and one-half above the location of the engine,* from which the offal and other offensive matter were thrown into the river; and the officers and men refusing to use the water, claimant was compelled to haul it from above the slaughter-house, a distance three times as great as from the engine to the camp. The men also evinced their dissatisfaction by throwing obstacles in the way of its delivery—preventing the delivering carts from coming through the lines, removing the casks to inaccessible points, destroying his engine and tearing up his pipes, and even threatening violence to his person. At the same time it appears from notices on file from General Bates and Captain Dickerson that his contract was

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*Error: Governor Cox states that a *beef-contractor* erected it.

threatened to be revoked and declared null and void unless he supplied the full amount of keeping the casks always full.

He alleges he supplied a greater amount of water than he proposed, or was mentioned in the proposals, or was paid for, and to have incurred increased expenses in being compelled to haul the water three times the distance than that contemplated at the time of the undertaking, as understood by all parties.

One portion of the contract stipulates for the delivery of one and one-half gallons per man per day, and another portion requires *the casks to be filled at daylight, and refilled as often as emptied during the day until sunset.*

He alleges, therefore, that to keep down complaints he was compelled to fulfill this portion of the contract, which required a supply of from three to five gallons per man per day; and when compelled to haul it from above the slaughter-house the expenses were greatly increased; that water could not be hauled by teams at 15 cents per 100 gallons, but that the usual rates were never less than 40 cents, and sometimes more than double that amount; but if he had been permitted to furnish the water by engine and pipes, the amount of 15 cents per 100 gallons would have been amply remunerative.

By an order from the Quartermaster-General dated April 10, 1863, to Capt. John A. Dickerson, assistant quartermaster, referred to Capt. D. W. McClung, assistant quartermaster, he was directed to settle the claim of Colonel Worthington arising out of his contract, in accordance with justice, the regulations, and the terms of the contract.

Captain McClung reports that Colonel Worthington has been paid at the rate of 15 cents per 100 gallons for 1½ gallons per man per day, and 40 cents per 100 gallons for additional allowance (one gallon), from 10th June, the date of the authorized increase (authorized by an order from General McClellan).

Enumerating the obstacles thrown in the way of the delivery of the water, and the increased labor imposed thereby on the contractor, Captain McClung states further that "it was stipulated and understood that the water should be taken from the river at the nearest point to the camp, distant about two-fifths of a mile. But the erection of a slaughter-house above the camp, from which the offal was thrown into the river, compelled Colonel Worthington to haul the water one and one-third miles, or about three times the distance, officers refusing to receive water from below the slaughter-house, and soldiers even threatening Colonel Worthington's life if he did not provide pure water."

He further states that "the supply of water first agreed upon was too little, and when adhered to, caused great complaint and ill-feeling. After the agreement with Colonel Worthington was annulled, the work devolved upon me. To keep down complaints and clamor, I was required to furnish not less than three gallons per man per day, and in making permanent arrangements for watering the camp, I considered five gallons per man per day the minimum."

Speaking of the contract, he says: "The contract was more than filled by Colonel Worthington, but on the part of the other contractor (the government) not one stipulation was fulfilled, save the one paying the contract rate for the supply of water."

He concludes his report as follows: "Justice requires that Colonel Worthington should be paid an additional allowance of 15 cents per 100 gallons for 1½ gallons per man per day for water delivered in May, and an additional allowance of 25 cents per 100 gallons for 1½ gallons per

man per day, from June 1, the date at which he began hauling water the increased distance."

In a deposition given on the 9th of February, 1867, Captain McClung states that he "was in charge of the quartermaster's department at Camp Dennison, Ohio, from April 29, 1861, until the summer of 1862, and during the months of May and June, 1861, Colonel Worthington entered upon the work of supplying the water 10th May, and the agreement was terminated 26th June following. The stipulated supply of 1½ gallons per man per day proved entirely insufficient. On the 20th May, Captain Dickerson notified Colonel Worthington that unless he complied with the terms of the contract within three days, it would be annulled. But the agreement limited the supply to 1½ gallons per man per day, and another clause required the casks to be kept full from sunrise to sunset. This, practically, would require the contractor to furnish an unlimited amount, to be paid for at the limited rate of 1½ gallons per man per day. Colonel Worthington had already supplied the amount for which he was to receive pay, although the barrels were not kept full.

"From the 20th May to the 1st of June there were furnished not less than three gallons per man per day, and from the 1st to the 26th of June there could not have been less than five gallons per man per day furnished by Colonel Worthington, by means of pipes, wells, drays, and carts. I make this statement because I was every day giving attention to the matter, and because, as soon as Colonel Worthington's contract ended, I took the matter into my own hands. Both my observation and my experience justify the above statement."

There are three grounds or causes upon which the claimant asks to recover. 1st. For supplying more water than he contracted to supply. 2d. For being compelled to haul it from a greater distance than was stipulated in the contract or contemplated by the parties when the contract was made; and, 3d. For actual loss incurred by tearing up his pipes, destroying his engine, and obstructing the delivery of the water.

The third point, for injury to property, and obstructions thrown in the way of the execution of the contract, sounding in damage, the accounting officers have not jurisdiction.

Upon the first and second grounds, there does not appear to be anything in the contract to prevent the accounting officers allowing upon a *quantum meruit*, if the claim is established by the evidence. Though the contract, in one clause, limits the delivery to 1½ gallons per man per day, yet the authorities compelled the delivery of a supply equal to the demands or wants of the camp, under the clause of the contract stipulating that the casks should be kept full from sunrise to sunset; and the evidence is that after notice the claimant so increased the supply as to put down all complaints. Captain McClung states that, from the 20th of May to the 1st of June, there were furnished not less than three gallons per day, and from the 1st to the 26th of June not less than five gallons per man per day.

The claim is not susceptible of an accurate adjustment, as the quantity delivered is not accurately known, nor the expense for the increased distance of hauling definitely ascertained. But, as it appears that the claimant is equitably entitled to remuneration for the increased quantity and distance hauled, the following basis of settlement is respectfully submitted:

Allow claimant for 1½ gallons per man per day for 12,000 men from 20th to 31st May at 15 cents per 100 gallons, and for 2½ gallons per man per day for 12,000 men from 1st to 26th June at 40 cents per 100

gallons, in addition to the payments heretofore made, the claimant having received already payment for 1½ gallons per man per day for 12,000 men from 10th to 31st May, and the same rate on 1½ gallons and an adtional gallon per day at 40 cents from June 1 to 26.

The claim would then stand thus:

May 20 to 31, 1½ gallons, 12,000 men, 12 days = 216,000, at 15 cents per 100 gallons.	$324 00
June 1 to 26, 2½ gallons, 12,000 men, 26 days = 780,000, at 40 cents per 100 gallons.	3, 120 00
	$3, 444 00

Respectfully submitted.

JOHN WILSON,
Auditor.

Hon. J. M. BRODHEAD,
Second Comptroller.

SECOND COMPTROLLER'S OFFICE,
March 12, 1867.

Respectfully returned to the Third Auditor.

I concur with the Auditor in the conclusions of his report in the within claim of Col. T. Worthington for furnishing water, &c., and payment may be made of the sum of $3,444.

Respectfully,

J. M. BRODHEAD,
Comptroller.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
January 31, 1870.

SIR: Mr. Thomas Worthington presents an application for further allowance upon his claim for compensation for supplying water at Camp Dennison, Ohio, in May and June, 1861, as follows:

First. He makes vague complaint that there is still something due him *under the contracts;* but neither states the amount of such balance nor how arises.

Second. He claims a further allowance, not under the contract rates, but over and above them. He admits that the highest rate ever *agreed* to be paid him was 40 cents per 100 gallons; but he asks the accounting officers to set aside and disregard the contracts, and allow him an *additional* 20 cents per 100 gallons on all water hauled from above the slaughter-house, and assigns for reason that when he agreed to the rate of 40 cents, he *intended* to furnish the water from below the slaughter-house.

Both these matters have before been presented to and decided by the accounting officers. No new and material evidence is presented as to the first; and, as the accounting officers have already decided that their jurisdiction does not extend to the second, no evidence in relation thereto can now be material. The whole matter appears to be *res adjudicata*, and should not be further considered.

But if you should deem proper to reconsider the matter, then I submit as follows:

First. As I have stated, Mr. Worthington vaguely complains that something is yet due *at the contract rates*, but without attempting to show what it is. I will, therefore, merely compare what *he claims* with what *he has been paid*, in order to demonstrate that there is no room for such pretended balance.

He claims that it was agreed (and in pursuance of his bid) that he should be paid 15 cents per 100 gallons if he should furnish only 1½ gallons per man per day; but should be paid 40 cents per 100 gallons for any excess. He admits that during the first ten days (May 10 to 19) he confined the supply to the 1½ gallons. In his computation of February 25, 1869, he charged 40 cents for *that* period; but even *he* cannot pretend that such charge was just. I will therefore consider his claim for that period as he now states it, and not as he has before computed it.

He claims to be entitled under the contract to 40 cents per 100 gallons for *all* the water supplied on and after 20th May. He, however, does not pretend to explain by what authority, by whom, or in what manner any such change was made at that date in the contract, nor does any evidence show such change.

He claims that from 16th to 10th May, both inclusive, ten days, he supplied 1½ galions per man per day; from 20th to 31st May, both inclusive, twelve days, 3 gallons; and from 1st to 26th June, both inclusive, twenty-six days, 5 gallons.

A computation at the rates and for the quantities as claimed by him is as follows:

12,000 men per 100 gallons:	
May 10–19, 10 days, 1½ gallons, at 15 cents	$270
May 20–31, 12 days, 3 gallons at 40 cents	1,728
June 1–26, 26 days, 5 gallons, at 40 cents	6,240
Making an aggregate of	8,238

And he has been paid—

By Captains McClung and Dickerson	$2,971
By accounting officers, $3,444 and $1,823	5,267
	$8,238

It must not be understood as my opinion that the evidence shows either that the contracts were as he states them or that he actually furnished as much water as he alleges. I have made this computation merely to show that even on his own statement of rates and quantities he has been paid the last dollar which can be his due under the contracts.

Second. It is wholly unnecessary to discuss the other branch of his present demand. It is not pretended by Mr. Worthington that it was ever agreed that he should be paid at the rate of 60 cents per 100 gallons, or at any rate higher than 40 cents.

The contract having prescribed the compensation, no plea of alleged hardships or equities would justify the accounting officers in disregarding its provisions and increasing the compensation.

I decline to express any opinion as to whether Mr. Worthington is equitably entitled to any allowance beyond his contract. That question belongs exclusively to Congress, which alone is competent to give such relief.

Respectfully submitted.

A. M. GANGEWER,
Acting Auditor.

Hon. J. M. BRODHEAD,
Second Comptroller.

SECOND COMPTROLLER'S OFFICE,
March 17, 1870.

Respectfully returned to the Third Auditor.

Upon re-examination of the papers in the within-described claim of

T. Worthington, I am of the opinion that no further allowance can be made by the accounting officers.

The claim is one for unliquidated damages, and jurisdiction in the premises is confined to Congress or to the Court of Claims.

Respectfully,

J. M. BRODHEAD,
Comptroller.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
March 25, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, asking me to state "What items of Colonel Worthington's claim for damages may be properly paid by the accounting officers of the Treasury under special authority of Congress."

The claim of Colonel Worthington has been a long time before this office and has been carefully considered. Of course no allowance has been made for "damages," as the accounting officers have no authority to adjudicate such claims. It is for Congress alone to decide whether damages should be paid to him or not, and any appropriation which Congress may make will of course be paid.

Colonel Worthington has been paid under his contract for all the water that he furnished, viz, $8,238. He now claims (see paper inclosed) as follows:

A. For hire and expense of steam-engine, &c., 48 days, &c	$1,557
B. For increased expense of delivering water, &c	1,056
C. For increased expense of delivering water, &c., in consequence of the government failing to keep receiving casks in place, &c	4,344
Total	6,957

The first item, A, is indorsed as reasonable by the Hon. B. Eggleston and R. B. Hayes. The second, B, is an estimate which I have no means of verifying, but presume that this subject was taken into view when the amount allowed him was increased from 15 to 40 cents per 100 gallons. The third, C, is for Congress alone to consider, and I would suggest that General Cox, now Secretary of the Interior, who was in command at Camp Dennison, should be called on for his opinion on this point.

The estimate being more than half the amount paid him on his contract, seems to me to be excessive.

The papers inclosed with your letter are herewith returned.

Very respectfully,

A. M. GANGEWER,
Acting Auditor.

Hon. R. C. SCHENCK,
House of Representatives.

I certify the above to be a true copy of the original letter signed A. M. Gangewer, &c.

WORTHINGTON.

WASHINGTON, D. C., *May* 25, 1875.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 92.

LETTER

FROM

THE SECRETARY OF WAR,

RECOMMENDING

The purchase of certain property in the city of Washington for public use.

JUNE 1, 1878.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

WAR DEPARTMENT,
Washington City, May 31, 1878.

The Secretary of War has the honor to transmit to the United States Senate, for the consideration of the Committee on Appropriations, copy of a letter from Mr. J. H. Clark, the owner of a lot adjoining Winder's building, and to ask special attention to the subject of the purchase of this lot and adjoining ones for the use of the War Department. It is the purpose of the department, should Congress grant the necessary authority, to purchase for public use all the lots fronting on Seventeenth street and adjoining Winder's building, and also on G street. These lots and the buildings thereon are rented by the department and used for necessary office-room, and are now indispensable. Even with the room proposed to be furnished the War Department in the new building now being erected, there will still be the same necessity for them, and particularly so if the act proposing to transfer the Indian Bureau to this department should be passed. The valuable public records now stored in these offices are constantly subject to danger from fire, the old buildings containing much inflammable material. There is no better time in respect to economy of purchase than now, and the attention of Congress is, therefore, again invited to the report and recommendations heretofore submitted from the Adjutant-General and the Quartermaster-General.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *United States Senate.*

WASHINGTON, *May* 29, 1878.

SIR: Permit me to call your attention to the fact that, in the year 1869, I entered into a contract with the Hon. John A. Rawlins, Secretary of War, to build on the lot adjoining Winder's building, on Seventeenth street, a fire-proof building of the same design and construction as that building, and to be in fact a continuation thereof. That in pur-

suance of the conditions of this contract, I destroyed the building which was at that time, and had for many years previously (and before I purchased the property), been rented by your department for $50 per month, and I was thereby deprived of a revenue that, to the present time, would have amounted to $5,400. I also expended about $500 in removing the old building, laying new foundations, and purchasing material, and was proceeding to fullfil my contract, when, on , I was notified by the Hon. William W. Belknap, Secretary of War, that he declined to carry out the agreement made by his predecessor. I consequently stopped work, as a building of the kind I had arranged for was of no value save for government use. I have, therefore, been damaged by the action of your department to the extent of the expenditure on the property, with interest, and to the loss of rent and interest thereon from time to time, and I would respectfully request that you obtain such legislation as will enable you to grant me the relief I am entitled to.

I have also to call your attention to the fact that I have been prevented from building on the lot since the refusal of the Secretary to comply with the contract made by me, by the requests of officers of your department to refrain from so doing, because of the injury that would thereby be caused to Winder's building, and because they believed that authority would be granted by Congress to authorize the purchase or erection of a building thereon. This delay has seriously embarrassed me, and I respectfully request that you will obtain, if possible, a definite decision from Congress, and authority to purchase the lot in question, which I am willing to sell at an appraisal to be made in the usual manner, as I cannot agree to wait any longer, but must of necessity endeavor to utilize, in some manner, my property, which is at present a source of loss instead of profit.

Hoping that you will see the propriety and equity of this request, I remain,

Very respectfully,

JOHN H. CLARK.

Hon. GEORGE W. MCCRARY,
Secretary of War.

45TH CONGRESS, 2d Session. } SENATE. { Ex. DOC. No. 93.

LETTER

FROM

THE SECRETARY OF WAR,

SUBMITTING

An estimate of the cost of acquiring title to and inclosing lands in which Confederate prisoners of war are buried and erecting headstones over their graves.

JUNE 5, 1878.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington City, June 3, 1878.

The Secretary of War has the honor to transmit to the United States Senate, for the information of the Committee on Military Affairs, a communication from the Quartermaster-General, dated the 31st ultimo, submitting estimate of the cost of acquiring title to and inclosing lands in which Confederate prisoners of war are buried and of erecting headstones over their graves.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT, *United States Senate.*

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., May 31, 1878.

SIR: On the 14th instant I had the honor to report, in reference to the proposed sale to the War Department of a lot of ground near Columbus, Ohio, on which were buried prisoners of war who died at Camp Chase, that the question submitted was one to be decided only by Congress and that the War Department could only execute the laws when enacted.

I have seen the report of the Committee on Military Affairs of the Senate of the United States upon this subject, and I find that the committee is of opinion that the United States, being charged with the sepulture of those who died prisoners in its hands, is required to provide not only suitable place of sepulture, but to protect the title to their graves against all adverse claimants, so that the dead may not be disturbed; that the laws of humanity are not fulfilled by laying them in the earth without securing their resting-place from molestation, and that, as the matter now stands, the United States being lessee, not owner in fee-simple of the land, no such security exists, and that, "should there be other deceased Confederate prisoners of war who died under similar cir-

cumstances, lying buried upon private lands, it is the duty of the government to make reasonable outlay to secure title to the narrow earth in which their remains do rest."

In furtherance of this object, I have the honor to submit a list of places at which, according to information in this office, prisoners of war were buried by the United States authorities during the late struggle. It is extracted from House Document, Fortieth Congress, third session, Report 45, page 768.

The number of prisoners dying in captivity is stated at nearly 27,000. The number of places at 110. On page 771 of same document I find a list of Federal prisons, twenty in number. The greater number of those reported to have died in captivity were buried by the United States near the prisons; those who died in this city were buried at national military cemeteries; others near the place of decease.

The care of prisoners of war was laid upon a special officer of the War Department (the commissary-general of prisoners), and his report will doubtless give fuller information than the records of this office supply.

But as the termination of the session of Congress approaches, it is proper to submit at least an approximate estimate of the quantity of land to be purchased, and the number of graves to be cared for, and of the cost of preserving and inclosing them.

It is not possible at this time to make an exact estimate of the cost of purchasing those prison-cemeteries not now owned by the United States, but the estimate below is as nearly correct as can now be made:

For purchase of prison-cemeteries used during the late war	$10,000
For inclosing the same	100,000
For 27,000 stones and blocks to be placed at graves of deceased prisoners	94,500
Total	204,500

As no existing law authorizes the War Department to purchase land for this purpose, a special enactment will be necessary, which may probably be made most conveniently by an amendment extending the law of February 22, 1867, relating to national military cemeteries, so as to embrace lands on which prisoners of war are buried.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. A.

The Hon. SECRETARY OF WAR.

Detailed statement of the number of Confederate prisoners of war who died in the hands of the United States authorities during the rebellion of 1861–'65, *with locality of prison and the number of graves.*

Place.	Number of deaths.	Graves.	
		Known.	Unknown.
Alexandria, Va	53	45	8
Alton, Ill	1,613	850	763
Annapolis, Md	5	3	2
Army corps stations	133	118	15
Army of Potomac	7	.....	7
Atlanta, Ga	5	2	3
Baltimore, Md	119	77	42
Batesville, Ark	1	1	.....
Beaufort, N. C	1	1	.....
Beaufort, S. C	4	1	3
Bermuda Hundred, Va	4	.....	4

Detailed statement of the number of Confederate prisoners of war, &c.—Continued.

Place.	Number of deaths.	Graves.	
		Known.	Unknown.
Bowling Green, Ky	4	.....	4
Bridgeport, Ala	18	14	4
Camp Butler, Ill	816	.....	816
Camp Chase, Ohio	2,108	1,900	208
Camp Douglas, Ill	3,759	2,317	1,442
Camp Morton, Ind	1,763	1,556	207
Camp Nelson, Ky	13	13	.....
Camp Randall, Wis	137	2	135
Chambersburg, Pa	1	1	.....
Charleston, S. C	1	.....	1
Chattanooga, Tenn	74	40	34
Chester, Pa	213	177	36
Cincinnati, Ohio (McLean barracks)	6	.....	6
City Point, Va	34	21	13
Clarksburg, Va	1	1	.....
Cleveland, Ohio	2	.....	2
Columbus, Ohio	1	.....	1
Corinth, Miss	13	5	8
Covington, Ky	5	2	3
Cumberland, Md	5	1	4
Cumberland Gap, Tenn	1	1	.....
David's Island, New York Harbor	178	177	1
Elmira, N. Y	2,980	2,928	52
Fairfax Seminary, Va	1	1	.....
Farmington, Miss	2	1	1
Farmville, Va	67	65	2
Fort Columbus, New York Harbor	35	24	11
Fort Delaware, Del	2,502	1,685	817
Fort Donelson, Tenn	1	.....	1
Fort La Fayette, New York Harbor	2	.....	2
Fort Leavenworth, Kans	5	5	.....
Fort McHenry, Md	33	2	31
Fort Mifflin, Pa	3	1	2
Fort Monroe, Va	35	.....	35
Fort Pickens, Fla	1	.....	1
Fort Pulaski, Ga	11	9	2
Fort Scott, Kans	10	10	.....
Fort Smith, Ark	7	4	3
Fort Warren, Boston Harbor	13	5	8
Fort Wood, New York Harbor	6	1	5
Franklin, Tenn	2	2	.....
Frederick, Md	226	223	3
Gallipolis, Ohio	5	.....	5
Gettysburg, Pa	210	169	41
Goldsborough, N. C	2	.....	2
Harper's Ferry, Va	2	2	.....
Harrisburg, Pa	4	.....	4
Hart Island, New York Harbor	230	176	54
Helena, Ark	2	.....	2
Hickman Bridge, Ky	2	.....	2
Hilton Head, S. C	14	6	8
Jacksonville, Fla	1	.....	1
Johnson's Island, Ohio	270	243	27
Jordon Springs, Ky	5	.....	5
Kansas City, Mo	12	12	.....
Keokuk, Iowa	1	.....	1
Key West, Fla	2	2	.....
Knoxville, Tenn	138	118	20
La Grange, Tenn	5	3	2
Lexington, Ky	16	8	8
Little Rock, Ark	220	215	5
Louisville, Ga	1	.....	1
Louisville, Ky	139	110	29
McMinnville, Tenn	1	.....	1
Martinsburg, Va	1	.....	1
Memphis, Tenn (post)	109	102	7
Montgomery, Ala	1	.....	1
Morris Island, S. C	3	2	1
Mound City, Ill	3	.....	3
Murfreesborough, Tenn	16	15	1
Nashville, Tenn	569	504	65
New Albany, Ind	2	2	.....
New Berne, N. C	112	107	5
New Creek, Va	7	7	.....
New Market, Tenn	4	.....	4
New Orleans, La	329	314	15
Newport News, Va	89	70	19
Paducah, Ky	6	.....	6
Petersburg, Va	107	94	13

Detailed statement of the number of Confederate prisoners of war, &c.—Continued.

Place.	Number of deaths.	Graves.	
		Known.	Unknown.
Philadelphia, Pa	22	13	9
Pittsburg, Pa	13	.....	13
Point Lookout, Md	3, 446	2, 594	852
Portsmouth, Va	2	.....	2
Portsmouth Grove, R. I	1	.....	1
Raleigh, N. C	9	8	1
Richmond, Va	178	172	6
Rock Island, Ill	1, 922	1, 854	68
Saint Louis, Mo	689	387	302
Savannah, Ga	40	24	16
Ship Island, Miss	162	151	11
Stevenson, Ala	6	4	2
Tullahoma, Tenn	3	.....	3
Unknown places	66	22	44
Vicksburg, Miss	61	2	59
Vining's Station, Ga	7	.....	7
Washington, D. C	457	111	346
Wheeling, W. Va (hospital)	3	.....	3
Willets Point, New York Harbor	3	1	2
York, Pa	4	4	.....
Total	26, 774	19, 920	6, 854

List of United States prisons used to confine Confederate prisoners of war.

Alton, Ill.
Camp Butler, Ill.
Camp Chase, Ohio.
Camp Douglas, Ill.
Camp Morton, Ind.
Elmira, N. Y.
Fort Delaware, Del.
Fort McHenry, Md.
Johnson's Island, Ohio.
Louisville, Ky.
Fort La Fayette, New York Harbor.
Hart Island, New York Harbor.
Newport News, Va.
New Orleans, La.
Old Capitol Prison, Washington, D. C.
Point Lookout, Md.
Rock Island, Ill.
Saint Louis, Mo.
Ship Island, Miss.
Fort Warren, Boston Harbor, Mass.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 94.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

RECOMMENDING

An appropriation, to be paid as compensation for services rendered the government by the late Professor Joseph Henry as a member of the Light-House Board.

JUNE 5, 1878.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
June 4, 1878.

SIR: In view of the very great services rendered by Prof. Joseph Henry, lately deceased, as a member of the Light-House Board, length of his services, and the value to the government of the duties performed by him, and considering the just claims of his family for some compensation therefor, I respectfully recommend that there be appropriated the moderate sum of $500 for each year of his employment as a member of the board.

Professor Henry served as a member of the Light-House Board without compensation from October 9, 1852, until the date of his death, May 3, 1878, being twenty-five years and eight months. During that period he was engaged in the practical business of the government, in the highest branches of scientific inquiry, on an average, two months in each year, and was chairman of the board over six years, having been elected to that position in October, 1871. He received during that time only expenses while actually engaged in the business of the government.

I inclose copies of two letters from the Light-House Board, of the date of May 21 and 28, giving the nature of his services.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. W. A. WHEELER,
President of the Senate.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, May 28, 1878.

SIR: Respectfully referring to your indorsement on the letter of the Light-House Board of May 21, 1878, relative to the services and duties rendered by Prof. Joseph Henry as a member of said board, I have the honor to state that he served as a member of the board from October 9, 1852, until the date of his death, May 13, 1878, being twenty-five years and eight months.

During that period he was engaged in the business of the government, on an average, two months in each year, and served as chairman of the board over six years, having been elected to that position in October, 1871.

The letter of the board of May 21, with your indorsement thereon, is respectfully returned.

Very respectfully,

GEO. DEWEY,
Naval Secretary.

Hon. SECRETARY OF THE TREASURY.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, May 21, 1878.

SIR: I have the honor to acknowledge the receipt of your letter of this date, asking a statement of the services and the duties rendered by Professor Henry as a member of the Light-House Board, the number of years of service, and, if practicable, the number of days in each year, &c; also, the amount and nature of the expenses incurred by him, and whether they were or were not refunded.

In reply, I beg leave to say that the services and duties rendered by Professor Henry as a member of the Light-House Board consisted of his attendance on the meetings of the board, his participations in its discussions, and in his performance of the duties of chairman of the committee on experiments.

As chairman of this committee, Professor Henry acted as the scientific adviser of the board. But, in addition, it was his duty to conduct the experiments made by the board, not only in the matter of original investigation and testing the material used, but in examining and reporting on the models, plans, and theories presented by others to the board.

The value of the services he rendered in this position is simply inestimable.

He prepared the formula for testing our oils, and, until the infirmities of age rendered it difficult, he usually applied them with his own hands. He conducted the series of experiments resulting in the substitution of lard-oil for sperm, which effected an immense saving in cost; and he also conducted the experiments which have resulted in making it possible to substitute mineral oil for lard, when another economy will be made.

His original investigation into the laws of sound have resulted in giving us a fog-signal service conceded to be the best in the world.

His examinations into the action of electricity, has enabled the board to almost completely protect its stations from the effect of lightning.

The result of his patient, continuous, practical experimentation is visible everywhere in the service. No subject was too vast for him to undertake; none too small for him to overlook. And while he has brought into the establishment so many practical applications of science, he has done almost as much service by keeping out what, presented by others, seemed plausible, but which on examination proved impracticable.

Every theory, plan, or machine which was pressed on the board, as for the interests of commerce and navigation, was referred to the committee on experiments, when it was examined by its chairman, and was

formally reported upon. If it had no practical value, the report on record simply stated the inexpediency of its adoption; but the professor often verbally pointed out to the presenter its fallacy, and sent him away, if not satisfied, at least feeling that he had been well treated.

He thus prevented not only the adoption of impracticable plans, but avoided the enmity of their inventors.

Professor Henry made many valuable reports, containing the results of his elaborate experiments into matters which were formally referred to him, which are spread on the records of the board, and the reports were drawn in such form that his suggestions were capable of and received practical application. But, in addition to this, he was constantly extending his scientific researches for the benefit of the service in all directions. His summer vacations were, as a rule, passed in experimentation at the laboratory of the establishment at Staten Island, on its steamers, or at its light-stations, pushing his inquiries to their last results.

To experimentation in the interests of this service Professor Henry seemed to give his whole heart. It occupied a portion of all his thoughts, it was present with him at all times, it was woven into all his other duties, and it will be found running through many of the speeches and papers submitted not only to the Smithsonian Institution, but to the National Academy of Science and the Philosophical Society, of which he was head, and to the Electrical and other societies of which he was a member. It appeared as if he never lost sight of the needs of the establishment, and as if he never neglected an opportunity to advance its interests.

In addition to his other duties, Professor Henry presided as chairman of the Light-House Board for the last seven years at its weekly meetings, when he did much to infuse into the different members of the board his own spirit of labor for and devotion to its interests.

In reply to the question as to the number of years of service Professor Henry has spent in the Light-House Board, I have to say that he was one of the original members appointed in 1852, and that he served as such, continuously, up to the time of his death, giving a little more than a quarter of a century to its duties.

In reply to the question as to the number of the days in each year which Professor Henry gave to the Light-House Service, I have to say, the whole of each summer vacation from his duties as director of the Smithsonian Institution, say from six weeks to two months, were devoted to it; but, apart from that, few, if any, days were entirely given up to it, except when he was sent by the board to make special examinations and reports, making, perhaps, a month more in each year. Otherwise, while no day was free from it entirely, no day was wholly given up to the Light-House Service.

As to the amount and nature of the expenses incurred by Professor Henry, I have to report that they were simply and solely actual traveling-expenses, when absent from this city on duty, for which due itemized accounts were made, and which were paid on presentation of his sworn account, under the rules of the department. All such expenses were refunded, but no other payments were made to him, or could be made to him, under the organic law of the board.

Very respectfully,

GEO. DEWEY,
Naval Secretary.

The Hon. SECRETARY OF THE TREASURY.

[Indorsement on letter.

State the number of years Professor Henry served as a member of the board, the number as chairman of the board, and what number of months or days in each year, on an average, he was employed for business of the government.

JOHN SHERMAN,
Secretary.

MAY 24, 1878.

45TH CONGRESS, 2d Session. } SENATE. { Ex. Doc. No. 95.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING, IN OBEDIENCE TO LAW,

THE NINTH REPORT UPON THE IMPROVEMENT OF THE SOUTH PASS OF THE MISSISSIPPI RIVER.

JUNE 3, 1878.—Ordered to lie on the table.
JUNE 6, 1878.—Motion to print referred to the Committee on Printing.
JUNE 10, 1878.—Resolution to print reported, considered, and agreed to.

WAR DEPARTMENT,
Washington City, May 31, 1878.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives, in compliance with the provisions of paragraph 10 of the fourth section of the river and harbor act of March 3, 1875, the *ninth* report upon the improvement of the South Pass of the Mississippi River, showing the condition of the bar at the head of the pass April 12, 1878, of the bar at the mouth of the pass May 9, 1878, and of the jetties, dikes, &c., April 15, 1878, by M. R. Brown, captain of engineers, United States Army.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

Ninth report upon the improvement of the South Pass of the Mississippi River, showing the condition of the bar at the head of the pass April 12, 1878, *of the bar at the mouth of the pass May* 9, 1878, *and of the jetties, dikes, &c., April* 15, 1878.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., May 11, 1878.

SIR: I have the honor to forward this day manuscript of ninth report on the improvement of South Pass Mississippi River, with the following charts to accompany:

No. 1. Main pass above Grand Bayou.
No. 2. Main pass below Grand Bayou.
No. 3. Upper end of jetties.
No. 4. Lower end of jetties.
No. 5. Works at head of passes.
No. 6. Plans and sections of jetties.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, United States Army.

The honorable the SECRETARY OF WAR,
Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, La., May 11, 1878.

SIR: I have the honor to submit the following report on the works and channels improved thereby at South Pass and vicinity, under the sanction of act of Congress approved March 3, 1875, contracting with Mr. James B. Eads and associates.

My last report presented the condition of the various constructions November 10, and the depths in the channel over the lower bar December 15, 1877. The present report gives the details of hydrography for the bar at the Head of Passes April 12, and for the lower bar May 9, 1878, and exhibits the condition of the jetties, dikes, &c., April 15.

AT THE HEAD OF THE MISSISSIPPI PASSES.

No additions have been made to any of the mattress walls here since the date of the last report, and all the works remain substantially in their former condition.

The depths over the bar near the upper end of the east T-head have fluctuated within a range of about 2 feet at different times. March 18 a practicable channel of a little more than 21 feet in depth at average flood tide was found, but at the actual stage of the river this gave nearly 22 feet at most high stages of the tide. At present a practicable channel 22.9 feet in depth exists, and the 22-feet channel is 255 feet wide. These figures refer to average flood tide.

The jetty company has made an arrangement with Mr. John Grant, in compliance with which he has lately been endeavoring to deepen the channel by using a device which consists essentially of a flat-boat, provided with hoisting-machinery, which is geared to stout wooden uprights working freely vertically in iron collars. To the lower end of these uprights a wooden apron is framed, inclined at an angle of perhaps 35° to the vertical. This apron, about 3½ feet wide, is in three sections, so that all three may be raised separately or together.

When the boat is at work it lies broadside to the current, and the apron being lowered down to or close to the bottom, the obstruction to the current is supposed to cause scouring action immediately at the surface of the river's bed, and a small steamboat, on the down-stream side of the flat-boat, corrects the latter's alignment, and prevents a too rapid movement downwards.

This attempt at deepening the channel was begun about March 20, and has continued at intervals since, much time having been lost, however, by breakages, &c. The channel has certainly deepened somewhat in its shoalest part. The increased available depth over this portion is about 2 feet. Above the locality where Grant's device has worked, where a depth of about 26.5 feet is found, a shoaling of a few tenths of a foot have occurred.

The shoal ground included between the 20-feet curve and the east T-head has, on the whole, received an accession of water, although a shoaling action diminishing the average depth about 2 feet is manifest near the T-head, but a deepening of 3 feet has occurred nearer the channel, within the 20-feet curve.

In other parts of the space between the dikes the action has been so irregular that no generalization can be made, except to say that, on the whole, the channel remains in about the same condition as when last reported, although depths of from 25 to 30 feet in the regular track of vessels have been diminished by about one-half a foot over a considerable length, referring to the adopted plane of average flood tide.

In the Southwest Pass, and also in the Northeast, sometimes called Pass à l'Outre, several lines of soundings were run in the vicinity of the submerged mattress-dams. Taking for comparison with the survey of October 22, 1877, two lines in Northeast Pass, both of which start at their westerly ends, below Chester station, one 400 feet and the other 900 feet below, both crossing nearly at right angles with the direction of the thread of the current, I find that the pass has shoaled over the upper cross-section 0.52 feet; and over the lower one, 0.48 feet.

Comparing similarly two cross-sections in the Southwest Pass, the upper one traversing the mattress-dam, and the lower one crossing at a mean distance below the submerged dam of 250 feet, it is found that the pass has shoaled over the upper section 0.63 foot, and over the lower one it has deepened 0.33 foot, since October 20, 1877.

BAYOU GRANDE.

In my last report I stated that the renewal of the dam across this bayou was in progress (December 18). Since November this dam has been substantially rebuilt. A cross-section is shown on sheet No. 5.

The new work was finished in the last days of December, having been initiated about a month previously. Twenty-seven mattresses have been added in the eight tiers just above the upper of the three earlier rows of piles. The widths of the tiers, beginning at the lowest, are, respectively, 53 feet, 33 feet, 33 feet, 28 feet, 27 to 28 feet, 21 to 28 feet, 15 to 25 feet, and 15 feet, and the thicknesses vary from 1½ to 4 feet, some of the mattresses having irregular thickness to allow accommodation with irregularities in their beds. Not all of these layers are as long as the dam. The water flowed deepest over the middle portion of the old dam, hence the upper tiers are longest.

The greatest depth of water over the old work was 23 feet, while on the planks only 3 or 4 feet of water was above the mattresses.

Stone was used to sink the lower tiers of mattresses. The upper layer is covered with stone to an average depth of about 1.5 feet. This stone extends over the 25 or 30 feet of shore adjoining the dam at both extremities. The middle 100 feet or more of the dam is slightly below the present mean water surface, so that a thin sheet of water constantly escapes over it. The depth of this overflow, as well as its fall, varies, of course, with the stage of the river as well as with tidal conditions.

April 15, with the tide about 0.4 foot below average flood stage, and falling, and the river's surface marking 9.60 on the Carrollton gauge, the difference in the water-level, immediately above and just below the dam, was very nearly 1 foot. The deepest water over the dam itself was about 9 inches. The dam is now quite stable apparently, although it is, of course, subject to settlement. On the 5th of March, 1878, the river above Grande Bayou, and the bayou itself, were gauged, and the results showed a loss through Grande Bayou of 2.85 per cent. of the whole discharge of South Pass above the bayou. On the 15th of April another gauging similarly conducted indicated a loss of 4 per cent. through Grande Bayou.

The bayou has shoaled greatly above the dam since the first structure was placed here. Previously a depth of 30 feet or more was found 500 feet above it, where maximum soundings of only 11.5 feet are now obtained.

On the 25th of April an inspection of the dam revealed an increased flow over its crest; the extreme depth of water over the middle portion was 4.7 feet, and an average depth of about 3 feet was found, excluding about 25 feet at each end; these portions being above the water-surface.

EAST JETTY AT SOUTH PASS.

No very considerable additions have been made to either jetty since November 10, 1877. For the east jetty from East Point Station to 2,100 feet below, the mattress-work has been unaffected. A large portion of the stone that had been placed here as a convenient storage space has been removed to new work. From 2,100 to 2,630 feet from East Point a layer of loose willows, 20 feet wide and from 1 to 3 feet thick, has been superposed over the upper mattresses, and finally covered with stone to a depth of about 6 inches for a width of 12 feet.

Including stone, the reference of the upper surface varies from 1.0 foot above to $\frac{1}{5}$ foot below average flood tide.

From 2,630 to 2,900 feet from East Point no changes have been made. From 2,900 to 3,040 feet from East Point a layer of willows, 20 feet wide and 1 foot deep, has been placed over the old upper surface and covered with stone about 6 inches deep for a width of 12 feet. The average reference of this portion, including stone, is about 0.3 foot below average flood tide. From 3,040 to 3,300 feet from East Point no additions have been made. From 3,300 to 5,635 feet from East Point, a length of 2,335 feet, a tier of willows has been placed over the mattresses for a width of about 22 feet, and a depth varying from 1 to 3 feet. Over the middle portion of these is a layer of stone from 6 to 9 feet broad and about 1 foot deep. This stone was taken from that stored temporarily on the upper part of the east jetty. The reference of the top surface here varies from 1 foot above to 1 foot below average flood tide. From 5,635 to 11,200 feet from East Point no additions have been made to the jetty. In a few places the top tier of mattresses has been slightly displaced by the swells from the sea, but not seriously.

In my last report it is stated that, at the outer end of the east jetty, 545 feet of the upper tier and 180 feet of the next lower layer of mattresses was destroyed by the storms of September and October, 1877. Since November 10 this dilapidation has continued, more or less damage having been effected by various storms, until the total length of the upper tier destroyed is about 620 feet, and of the next lower tier 255 feet, including that previously reported. About 100 feet of the third tier from the top, at the outer end of the jetty, has also been demolished.

During the latter part of January, 1878, considerable quantities of stone were placed on the outer end of the east jetty, from 11,300 to 11,770 feet from East Point, to supply the vacancy caused by the destruction just stated.

The stone were from 4 to 6 feet in depth in January, its top surface rising above average flood tide, but gradually, by settling and spreading, and loss through surf-washing the upper surface has disappeared, and at average flood tide the water is at present from 2 to 6 feet deep above the stone.

During the latter part of January and early in February, 1878, two tiers of mattresses were sunken, one above the other, along the sea side of the east jetty, extending from 11,300 to 11,750 feet from East Point, a distance of 450 feet. This work was projected as a protection to the outer end of the jetty from the violence of wave action. The first tier is 20 feet wide and 3 feet thick on the jetty side; on the sea side it is 1.5 feet thick. The second or upper tier is 40 feet wide, with a thickness of 3 feet next the jetty, and only 1.5 feet thick on the sea side.

When these mattresses were first placed, the upper surface of the higher tier was from 1.5 feet to 2 feet below average flood tide on the jetty side, and from 8 to 10 feet below on the other edge, forming an in-

clined surface, sloping downward to the sea-bottom. Considerable stone was placed on the addition, and through settling or compression, or probably both, this work has sunken until the water above it is about 6 feet deep on the jetty side, remaining about as at first on the sea side.

In one or two spots the upper tier is somewhat broken, but not badly.

KIPP DAM, THE OFFSET OF THE WEST JETTY.

This work remains substantially as last reported.

THE WEST JETTY.

This structure has received no augmentation since November 10. Of the outer 1,000 feet the upper tier of mattresses is considerably broken, and in places entirely destroyed by the waves, most of the stone having been washed away.

March 24 a break was effected by undermining in the west jetty from 430 feet to 540 feet from pile No. 1, a distance of 110 feet. This undermining was caused by the continuation of the excessive scouring in the deep hole, whose beginning was described in the seventh report. This hole gradually filled up in its deepest part during the low-water season, until the sounding-lead indicated a depth of less than 80 feet, the lead sinking through many feet of very soft mud, where a depth as great as 99 feet was found early in the present year.

With the rise of the river this season the soft mud was gradually dispersed, and a renewal of the scouring action was observed, until, on the 26th of March, one sounding of 114 feet was obtained. The scouring action extended itself over a greater area than last year, and, as stated, finally effected a breach in the west jetty.

March 29, the water rushing through this break had a depth of over 30 feet in its deepest part in the line of the jetty. It shoaled to 5 or 6 feet in depth within 50 or 60 feet of the jetty, piling on the sea side by the usual process of dispersion along radial lines. Wing-dam *k*, located at the scene of the break, was undermined and finally swept wholly away. At its former location 50 to 60 feet of water are found now, while the former depth was only from 8 to 10 feet.

A sketch showing the condition of the break March 29, five days after its occurrence, and after one tier of mattresses had been laid in furtherance of repairs, is given on sheet No. 3. Subsequently, the break was thoroughly repaired by the insertion of a layer of mattresses sunken by stone, and on these mattresses loose willows were placed, covered by about 2 feet of stone. Approximately, about 1,000 cords of willows and 400 cubic yards of stone were used in making these repairs, and the upper surface of the jetty at this point is now about $1\frac{1}{4}$ feet above average flood-tide.

THE WING-DAMS OR SPUR-JETTIES.

None of these structures have received additions or renewals since November 10. Most of them have suffered gradual and continued deterioration. Several have had their extreme outer ends undermined and otherwise broken and lost. The ends of *l*, *m*, *n*, and *o* were intentionally removed at the time of the break in the west jetty. The fall of the surface of the pass at high river, between a point near the upper wing-dams and the deep hole, is very great for the distance, about a tenth in about half a mile greater than elsewhere in the pass, and to this pressure and the accompanying contraction and concentration of

the direct currents, partially due to the length of the wing-dams, the extraordinary scouring action may be probably attributed. To partially remedy this, 100 feet or more of each of the four wing-dams above named were torn away, in the hope that the violent eddies heretofore observed may become less active mischievously. A good effect has doubtless been obtained, but another survey later will be required to ascertain the extent of amelioration afforded.

The following table exhibits the changes the various wing-dams have undergone since the date of the last report:

The following table will give all needed information in regard to deterioration, changes, and present condition of the wing-dams.

Designation of spur.	Length, in piling and mattresses, that have gone from the outer end since November 10, in feet.	Present length of spur from piling of main jetty, in feet.	Number of piles remaining.	Remarks.
A	.....	195	19	Top mattresses are broken and sunken, so that from 2 to 6 feet of water runs over the top of the dam.
a	.....	199	13	The lower row of piles is entirely gone, and from 2 to 5 feet of water runs over the mattresses.
B	80	70	7	Mattresses all gone, only piles remaining.
b	.....	150	8	Do.
C	75	128	16	Mattresses all sunk below water surface out of sight.
c	20	185	15	Do.
D	30	145	11	Mattresses all gone, only piles remaining.
d	28	112	9	Do.
E	70	140	21	Mattresses all sunk out of sight.
e	77	120	14	90 feet of tilted mattresses, but none in good order.
F	10	175	16	90 feet of tilted mattresses, but all in good order.
f	.....	135	16	Mattresses all below water surface.
G	5	239	24	Do.
g	60	109	19	71 feet of tilted mattresses in good order.
H	.....	231	31	Mattresses all below water surface, but apparently in good order.
h	85	118	14	Do.
I	10	192	23	Mattresses all in good order, but below water surface.
i	.....	193	19	Mattresses all in good order, same as last report.
△6,525 east jetty	.....	210	27	Do.
△6,525 west jetty	30	210	25	Do.
J	.....	251	27	220 feet of tilted mattresses in good order, same as last report.
j	100	80	4	Mattresses all gone.
K	5	175	13	141 feet of tilted mattresses in good order.
k	220	.....	.....	Entirely gone. See description of crevasse in west jetty, March 24.
L	30	205	17	25 feet of tilted mattresses, the rest gone.
l	140	*650	33	15 feet of outer end undermined, 125 feet purposely removed; no mattresses.
M	.....	220	20	100 feet of tilted mattresses in good order, same as last report.
m	170	*540	19	40 feet of outer end undermined, 130 feet purposely removed; mattresses all gone.
N	.....	187	13	148 feet of tilted mattresses in good order.
n	140	*360	36	10 feet of outer end undermined, 130 feet purposely removed, 360 feet of tilted mattresses in good order.
O	15	165	11	40 feet of tilted mattresses in good order.
o	105	*335	26	150 feet of outer end purposely removed, mattresses all out of sight.
p	.....	*326	24	Mattresses all the same as last report.

* Feet from shore.

"AVERAGE FLOOD TIDE."

In the act of Congress, approved March 3, 1875, making a contract for the improvement of South Pass, with James B. Eads and such others as may be associated with him, it is provided that the respective depths and

widths of channel "shall be measured at average flood tide." In order that the contractors might be able to pursue their work intelligently, and know early what was requisite to secure the first payment, it became necessary to establish, provisionally, some standard plane, which should conform as closely as possible to that indicated by average flood tide. Accordingly, Maj. C. B. Comstock, then the engineer officer, required by the above-named act of Congress to make reports, &c., to the honorable Secretary of War, established a self-registering tide-gauge, near South Pass light-house, August 21, 1875, and from that date until November 9, 1875, it remained here, and the record made was used to establish a temporary determination of average flood tide. The tidal recording apparatus was transferred to the Head of the Passes, but the contractors desiring an early establishment of the standard plane, both at the Head of the Passes and at the mouth, such data as had been previously obtained were used by Major Comstock, and the plane of average flood tide for the Head of the Passes was established on the following basis, announced in the Annual Report of the Chief of Engineers for 1875, "Appendix S." Major Comstock having requested, in an explanatory letter herewith (Appendix S 15), that the meaning of the phrase *average flood tide*, from which the measurement of depths fixing payments is to be made, might be defined, he was informed, with the approval of the Secretary of War, that "the intent of the law being to secure at all times at the head of the pass the same depths as are required to be maintained at the bar or mouth of the pass, the average to be adopted should be that derived from the flood tides occurring during the stage of river when its volume is least—that is, the average flood tide should be determined by excluding the effects of variations in the river discharge."

The data at hand for the Head of the Passes were insufficient for a rigorous determination, and a temporary establishment was made merely to have some standard plane to which soundings should be referred. This was defined to be a reading of 1 foot on the United States engineer gauge, at the wharf of the light-house at the Head of the Passes, the proper position of the gauge being assured by several permanent bench-marks.

Before the claim was made for the first payment, due on obtaining 20 feet over South Pass Bar, it was ascertained that the reference on the gauge at Head of Passes indicating an average flood tide, which should correspond at low river with the average flood tide at South Pass, was about 1.8 feet, or eight-tenths of a foot higher than the first provisional plane, and thereafter 1.8 was the accepted gauge-reading for average flood tide at the Head of the Passes until more and better data should be at hand. I give herein a table of mean tidal readings at Head of Passes, including such lunations or half-lunations as have occurred since October 30, 1876, during the whole of which the United States gauge at Carrollton indicated less than +2.7 feet for the height of the river. Any less reading than this is assumed to show low river.

The least reading on the Carrollton gauge was —1.4 feet; 1.745 is the reading on the United States gauge at Head of Passes corresponding to a mean reading of 0.86 foot on the Carrollton gauge. For 127 days out of 135 the Carrollton gauge indicated less than +2 feet.

On sheet No. 5 of this report will be found a set of curves showing the mean for each one-fourth of a lunation from December 8, 1876, to March 15, 1878, of the gauge-readings corresponding to high tide, low tide, and mean tide at South Pass light-house, and also the water-level curve indicated by the Carrollton gauge-readings for the same period, obtained in the same manner.

The influence of the river's rise at Carrollton on its height at South Pass light-house is very evident. It is necessary to remark occasionally, but rarely, some imperfection has occurred in the record of the tidal sheet, due to a wearing away of the pencil point, or some imperfection in the condition of the machinery, and in such cases the mean of the lunation is obtained by discarding the imperfect readings. These causes could possibly change the final result by only an inconsiderable amount, no great fractional part of a tenth of a foot.

Condensing, roundly, information gained by many observations, extending through more than two years, it would seem that a rise of 1 foot at Carrollton, when the gauge-reading is between 1 foot and 12 feet, causes a rise of the mean surface of the water at South Pass, averaging rather more than two-thirds of one-tenth of a foot, the mean level of the Gulf remaining unchanged, and the effects of storms excluded from consideration. This is only an approximate result. The results of more than one year's record on the self-registering gauge at South Pass light-house, including 14 lunations from December 8, 1876, to December 25, 1877, are given in a following table, by which it is seen that 2.734 is the average flood tide of the tide-gauge location. 2.76 designates the plane early established, and the concurrence of the provisional result with the final mean of 14 lunations is remarkable, especially as it had seemed from the result of cursory observations that the plane had been placed some tenths too high. This appearance resulted, doubtless, from the fact that high water occurred often in the night-time, and therefore frequently unnoted.

There seems to be no better location for the tide-gauge station than that chosen, when it is considered that it must be frequently visited, must be established securely and firmly, and must be sheltered from extreme violence of storms and of wave actions.

But unfortunate results ensue from the distance, over 3 miles, of the tide-gauge from the mouth of the jetties. When the river is in its low stage, the normal surface between the two points is an horizontal plane nearly, but at high river a fall of eight-tenths of a foot or more often occurs at low tide from the tide-gauge to the surface of the gulf over deep water. It follows that the fall of the tide in high river, from high water to low, is greater, for almost any given interval, at the end of the jetties than at the tide-gauge station, and if soundings made on the bar at extreme low tide are reduced to the reading of average flood-tide at South Pass light-house, and are placed side by side with the soundings so reduced, made at high tide, a discrepancy of two or three tenths must sometimes ensue from the cause referred to. To remedy this, I have ascertained, a day or two before each survey on the bar, what reading, on gauges near the mouth of the pass, has corresponded to average flood-tide at the light-house, and then in correcting soundings they are reduced to the corresponding average for the gauge nearest the work.

I have, with additional precaution, endeavored, when practicable, to make the soundings when the tide is considerably higher than at low-water. It is also a result of the position of the tide-gauge that, in time of low river, when the tide reads 2.76 on the light-house gauge, there shall be a slightly greater depth of water on the bar than at high-river stage, for the same reading of the gauge; for in time of low river the plane of the water's surface, though the average flood-tide reading of the gauge is nearly horizontal, while at high river it has a decided slope downward between the light-house and the pure gulf-water. The slope from the light-house to the ends of the jetties, as ascertained from bench-marks set along the jetties, is exceedingly irregular; and the net fall

between the light-house and the ends of the jetties is scarcely half the fall between the surface of the river at the light-house and Garden Island Bay, or between the former and the general gulf level, and along the line of the ends of the wing-dams there is not always, uniformly, any fall of the river's surface. Especially in the vicinity of the deep hole from station 40 to station 60, the water often returns upstream in eddies, markedly at low-tide, when the downward currents are strongest and most concentrated. There seems to be no better and more equitable manner of proceeding than that which I have followed.

The only available remedy would be the establishment of a strong and expensive tidal station, far out in one of the bays, connected with the land by a long bridge, and protected by surrounding breakwaters, but it is greatly doubted if it would be practicable to visit it in rough weather, and the violence of the waves would often render the tidal record of little worth, unless very costly breakwaters, often repaired, were built around the station.

The only other alternative would raise the question of its legality, in consideration of the words of the law above quoted.

This method would involve the establishment of more than one approximate average flood tide, perhaps many, but assume three, established in accordance respectively with the high stage, the low stage, and the mean stage of the river at Carrollton, the soundings on the bar being reduced to the reading on the South Pass gauge indicating one or the other standard, depending on certain limits, within which the three stages of the river at New Orleans should be severally defined.

This method would possess obvious inequalities also, and the small inaccuracy and uncertainty now inevitable, is after all of scarcely more practical importance in obtaining exact comparisons, than the condition of the bar as to hardness and softness. Three inches is about the extreme gain or loss that may be made under the present circumstances, and the violation of equity resulting in practice would seldom be as great as half of this, or hardly more than the supposable probable margin for error of a good leadsman, in estimating on the lead-line any one sounding.

Absolute accuracy would involve the impracticability of frequent variation of the reading at South Pass light-house, corresponding to average flood tide, made necessary not alone by the causes heretofore mentioned, but also by changes due to normal variations of level in the surface of the gulf, extending over considerable periods, modifying the slope of the lower reaches of the passes and of the river—changes imperfectly understood and not exactly mensurable by inshore tidal gaugings.

Table of mean tidal readings at Head of Passes.

Lunation.	High water.	Low water.	Average mid-stage of tide during lunation.	Mean rise and fall of tide.
One lunation from October 30 to November 25, 1876	2 0343	0. 7530	1. 3936	1. 2813
Half lunation from November 26 to December 10, 1876	1. 4941	0. 5400	1. 0170	0. 9541
Half lunation from January 6 to January 19, 1877	1. 0179	—0. 1364	0. 4408	1. 1543
One lunation from August 26 to September 21, 1877	1. 9762	0. 7869	1. 3815	1. 1893
One lunation from September 22 to October 19, 1877	1. 9981	1. 0920	1. 5450	0. 9061
One lunation from October 20 to November 15, 1877	1. 9492	0. 8452	1. 3972	1. 1040
	10. 4698	3. 8807	7. 1751	6. 5891
Means	1. 7449	0. 6467	1. 1958	1. 0981

SOUTH PASS LIGHT-HOUSE.

Lunation.	High water.	Low water.	Average mid-stage of tide during lunation.	Mean rise and fall of tide.
From December 8, 1876, to January 4, 1877	2.0880	0.5820	1.3643	1.5072
From January 5 to January 31, 1877	2.0135	0.6768	1.3451	1.3367
From February 1 to February 28, 1877	2.4706	1.5099	1.9873	0.9857
From March 1 to March 27, 1877	2.3207	1.2394	1.7570	1.1031
From March 28 to April 24, 1877	2.6975	1.7371	2.2173	0.9604
From April 25 to May 21, 1877	3.1062	2.0972	2.6024	1.0104
From May 22 to June 17, 1877	3.2251	2.2491	2.7293	0.9604
From June 18 to July 14, 1877	3.0372	2.0449	2.5411	0.9923
From July 15 to August 11, 1877	3.0267	1.9731	2.4999	1.0536
From August 12 to September 7, 1877	2,5878	1.3522	2.2217	1.4095
From September 8 to October 5, 1877	3.0182	1.8120	2.4473	1.2083
From October 6 to November 1, 1877	2.9513	1.6736	2.3228	1.3044
From November 2 to November 28, 1877	2.8124	1.5721	2.2553	1.3106
From November 29 to December 25, 1877	2.9221	1.6006	2.2614	1.3215
	38.2773	22.1200	30.5522	16.4641
Means	2.7340	1.5800	2.1825	1.1760

SURVEY OF THE MAIN BODY OF SOUTH PASS.

The difficulties to be encountered in a first survey of the entire pass have been alluded to in the seventh report.

Many of the old Coast Survey tubes are gone, and altogether it was possible to make a satisfactory survey of the pass, only by beginning *de novo*. This has been accomplished, and the results are shown on sheets Nos. 1 and 2. Telegraph poles placed on both sides of the river since Mr. Marinden made his survey with a Coast Survey party in May and June, 1875, greatly facilitated the work. A transit line was run on one side, not always the same, and readings by stadia wires were made at each minor station. From points whose position were thus ascertained, azimuth readings to stations on the other side were obtained, and several intersections were secured for each station, usually a telegraph pole. The distances from the line of the poles to the edge of the steep offset of the shore, were measured along offsets, making given angles with the main line; and thus the topography became known.

Larger structures, about 20 feet high, were built, and transit readings from these to the boat, when on known ranges, established the location of soundings. Three large-sounding stations were built in addition to an old one near Grand Bayou, and 472 telegraph poles were located, and one-fifth of them numbered. The results may be best appreciated by an inspection of the charts Nos. 1 and 2. It is seen that there has been a general fill, subject to some exceptions, since June, 1875. The survey was begun January 4, and the field-work nearly finished the last of January.

The table below given shows the amount of fill or scour, in the interval of nearly three years, in successive sections 1,000 feet long, and the drawing on sheet No. 2 shows graphically the difference in mean depths obtained by a comparison of the survey of 1878 with that of 1875, also the difference in maximum depths along a line joining the deepest soundings obtained respectively in 1875 and 1878. For the lower portion of the pass, near Cory's Base, a scour is generally found, as is indicated in the cross-sections given with the seventh report, but, for reaches 1,000 feet long, higher up the pass, but still below Bayou Grande, the

cross-sections then taken do not, apparently, correctly represent the average condition of these long sections, or of that portion of the pass.

The net deposit throughout the pass, from 760 feet below tide-gauge station to South Pass light-house, about 10 miles, since June, 1875, amounts to 3,031,023 cubic yards, making an average diminution of depth of 2.379 feet.

The shore-lines given in the charts are the older ones of 1875 for convenience in superposing tracings. The changes, however, are so slight as to have no consequence in our calculations. All possible allowance being made for such wearing away of the banks as may have occurred, will offset less than one per cent. of the entire fill diminished by the aggregate scour. The soundings above Bayou Grande were reduced to a reading of 1.8 on the United States Engineer gauge at the head of the pass. All soundings below the bayou were reduced on these sheets to a reading of 2.76 feet on the United States Engineer gauge at South Pass light-house. Mr. Marinden reduced his soundings of 1875 to a plane four-tenths of a foot lower than my own standard for all the area above Bayou Grande, and 1.79 feet lower for depths below Bayou Grande, but in the comparative diagrams given with this report all soundings are reduced to the later and higher planes of reference, and are thus directly comparable.

Comparative mean depth of South Pass for each one thousand feet in length from Station Bayou Grande to South Pass light-house, from Coast Survey chart of June, 1875, and United States Engineers' survey of January, 1878.

From Grande Bayou down, in divisions 1,000 feet long (distance in feet).	Distance in miles and decimals of a mile of center of division above East Point Station.	Mean depth and number of soundings.				Depth of average fill or scour over area from June, 1875, to January, 1878, in feet.		Area of division in square yards.	Total amount of scour or fill over area from June, 1875, to January, 1878, in cubic yards.	
		Coast Survey of June, 1875.		United States Engineers', of January, 1878.						
		Mean depth.	Number of soundings.	Mean depth.	Number of soundings.	Scour.	Fill.		Scour.	Fill.
0 to 1,000	5.73	25.221	44	20.717	39	.....	4.504	101,111	.....	151,767
1,000 to 2,000	5.54	24.128	39	22.682	45	.....	1.446	91,666	.....	44,183
2,000 to 3,000	5.35	25.642	34	25.624	41	.....	0.018	82,777	.....	496
3,000 to 4,000	5.16	26.861	35	25.744	43	.....	1.117	76,666	.....	28,519
4,000 to 5,000	4.98	25.956	28	27.163	38	1.207	.....	73,888	29,776	.....
5,000 to 6,000	4.79	28.410	24	29.558	39	1.148	.....	66,666	25,466	.....
6,000 to 7,000	4.60	31.215	27	31.920	34	0.705	.....	61,111	14,361	.....
7,000 to 8,000	4.41	31.556	30	29.081	27	.....	2.475	63,333	.....	52,249
8,000 to 9,000	4.22	30.758	32	29.820	35	.....	0.938	65,555	.....	19,453
9,000 to 10,000	4.04	30.687	34	29.002	34	.....	1.680	67,777	.....	37,955
10,000 to 11,000	3.85	30.128	31	26.800	37	.....	3.328	70,555	.....	78,245
11,000 to 12,000	3.66	29.373	30	25.487	39	.....	3.886	75,000	.....	100,125
12,000 to 13,000	3.47	27.438	37	26.535	34	.....	0.903	75,000	.....	22,575
13,000 to 14,000	3.28	30.203	29	27.835	45	.....	2.368	68,888	.....	54,352
14,000 to 15,000	3.09	29.405	26	29.125	36	.....	0.280	61,111	.....	5,683
15,000 to 16,000	2.90	30.352	32	29.355	32	.....	0.997	56,666	.....	18,813
16,000 to 17,000	2.71	29.457	34	30.632	37	1.195	.....	56,666	22,553	.....
17,000 to 18,000	2.52	30.593	33	29.355	29	.....	1.138	58,333	.....	22,108
18,000 to 19,000	2.33	27.961	35	29.189	37	1.228	.....	61,666	25,221	.....
19,000 to 20,000	2.14	27.533	37	26.376	34	.....	1.157	65,000	.....	25,025
20,000 to 21,000	1.95	25.790	29	25.060	40	.....	0.730	72,777	.....	17,684
21,000 to 22,000	1.76	23.935	24	22.478	28	.....	1.457	74,444	.....	36,105
22,000 to 23,000	1.57	25.048	29	26.648	31	1.600	.....	72,777	38,790	.....
23,000 to 24,000	1.38	24.127	37	24.706	30	0.579	.....	72,222	13,938	.....
24,000 to 25,000	1.19	23.790	37	26.530	42	2.740	.....	72,222	65,938	.....
25,000 to 26,000	1.00	24.467	31	28.059	44	3.592	.....	71,111	85,119	.....
26,000 to 27,000	0.81	25.672	34	26.328	38	0.656	.....	68,888	15,017	.....
27,000 to 28,000	0.62	26.062	33	26.888	34	0.826	.....	67,777	18,638	.....
28,000 to 29,000	0.43	26.530	27	26.529	29	.....	0.001	58,333	.....	17
Total	.....	.....	.....	.....	.....	.....	.....	1,959,986	354,817	715,354

Total area from Bayou Grande down ..... 1,959,986 square yards.
Total fill ..... 360,537 cubic yards.
Average depth of fill ..... 0.551 foot.

Comparative mean depth of South Pass for each one thousand feet in length from Station Bayou Grande to head of pass, from Coast Survey chart of June, 1875, and United States Engineers' survey, 1878.

From Grande Bayou up, in divisions 1,000 feet long (distance in feet).	Distance in miles and decimals of a mile of center of division above East Point Station.	Mean depth and number of soundings.				Depth of average fill or scour over area from June, 1875, to January, 1878, in feet.		Area of division in square yards.	Total amount of scour or fill over area from June, 1875, to January, 1878, in cubic yards.	
		Coast Survey, June, 1875.		United States Engineers, January, 1878.						
		Mean depth.	Number of soundings.	Mean depth.	Number of soundings.	Scour.	Fill.		Scour.	Fill.
0 to 1,000	5.92	24.810	58	20.578	39	.....	4.232	104,444	.....	147,266
1,000 to 2,000	6.11	26.432	46	25.866	36	.....	0.566	92,222	.....	17,393
2,000 to 3,000	6.30	28.676	38	25.164	31	.....	3.512	82,222	.....	96,199
3,000 to 4,000	6.49	33.071	35	29.768	29	.....	3.303	72,222	.....	79,516
4,000 to 5,000	6.68	33.512	31	33.458	31	.....	0.054	64,444	.....	1,159
5,000 to 6,000	6.87	36.017	34	33.281	33	.....	2.736	63,666	.....	58,063
6,000 to 7,000	7.06	34.287	31	30.080	30	.....	4.207	68,333	.....	96,802
7,000 to 8,000	7.25	33.882	29	29.813	31	.....	4.069	67,222	.....	91,153
8,000 to 9,000	7.44	32.623	30	31.741	36	.....	0.882	62,222	.....	18,293
9,000 to 10,000	7.63	37.025	32	32.200	32	.....	4.825	63,333	.....	100,839
10,000 to 11,000	7.82	35.583	30	33.456	30	.....	2.127	67,777	.....	48,053
11,000 to 12,000	8.01	35.800	35	31.587	31	.....	4.213	68,888	.....	96,718
12,000 to 13,000	8.20	36.161	44	31.051	41	.....	5.110	67,777	.....	115,424
13,000 to 14,000	8.39	36.300	45	31.392	41	.....	4.908	70,000	.....	114,520
14,000 to 15,000	8.58	33.851	31	25.665	38	.....	8.186	94,444	.....	257,643
15,000 to 16,000	8.77	26.437	41	20.713	52	.....	5.724	122,777	.....	234,258
16,000 to 17,000	8.96	23.125	40	18.354	51	.....	4.771	113,333	.....	180,199
17,000 to 18,000	9.14	27.290	32	22.210	47	.....	5.080	105,555	.....	178,704
18,000 to 19,000	9.33	27.691	48	23.564	39	.....	4.127	95,060	.....	125,625
19,000 to 20,000	9.52	29.272	43	24.954	48	.....	4.318	84,444	.....	121,514
20,000 to 21,000	9.71	33.493	32	25.527	36	.....	7.966	77,777	.....	206,497
21,000 to 22,000	9.90	36.290	37	28.487	32	.....	7.804	72,222	.....	147,926
22,000 to 23,000	10.09	36.325	20	31.256	25	.....	5.069	80,888	.....	136,619
Total	.....	.....	.....	.....	.....	.....	.....	1,861,212	.....	2,670,486

Total area from Grande Bayou up	1,861,212 square yards.	Total area of pass	3,821,198 square yards.
Total fill	2,670,486 cubic yards.	Total fill in excess of scour	3,031,023 cubic yards.
Average depth of fill	4.303 feet.	Average depth of fill for entire length of pass	2.379 feet.

SALT-WATER CURRENTS IN THE PASS AND CROSS-CURRENTS IN THE GULF.

At various times the investigation of the occurrence of salt-water, underlying the fresh, has been pursued, and in connection therewith several trials have been made to test the existence of a cross-current beyond the ends of the jetties. In addition to the hydrometer readings, taken when collecting samples of water for analysis for sediment, the following abstract gives the characteristic results of several tests for salt-water: In general it may be stated that salt-water is always found, even at extreme high river, at and near the bottom, very soon after passing the ends of the jetties in going down stream. It is rarely necessary to go 100 feet beyond the outer wing-dams to find brackish water, at mid-depths, and nearly pure sea-water at bottom-depths, while on the surface the water is often fresh enough to serve well for drinking, 2 or 3 miles beyond the jetties' ends. As regards cross-currents in depths much exceeding 100 feet, they are often found, and indeed are seldom absent, and it is often necessary to defer deep soundings from day to day until a time is found when the lead-line, with a heavy lead attached, can be used to obtain plumb-soundings, so frequently is the lead carried away to the east or west until the line is greatly inclined before the bottom is reached. Mainly for this reason, no soundings in the deep water of the Gulf are given in this survey. I prefer to await the calmest summer weather in the hope of obtaining more reliable soundings.

On several occasions a current in one direction, mostly westward, has been found on and near the surface, and a current opposed to this at considerable depths. Nearer the ends of the jetties many tests have been made for the existence of cross-currents near the bottom. The investigation is involved in considerable difficulty here. If double floats are used, the upper float draws the lower into currents near the surface, and it is necessary to anchor the boat and use only a single submerged float, upheld by the hand. No positive indications of a cross-current were obtained until March 13, 1878, when about 600 feet beyond the ends of the jetties, in 28 feet of water, the float sunken to a depth of 26 feet was carried swiftly to the eastward at an estimated rate of about 3 feet per second. The surface-currents were directed straight out to the Gulf and nearly parallel to the axis of the jetties. This day Carrollton gauge read 10.45 feet. The tide at South Pass light-house indicated 3.34 feet on the gauge. March 12, no cross-currents were found at the ends of the jetties. It must be borne in mind that it is only practicable to make these tests at times when the water over the bar is unusually quiet, and these are the occasions when side-currents are least likely to obtain.

As regards the existence of salt water in the pass itself, the following generalizations result from two years' investigations. Whenever the water's surface at Carrollton, La., reads + 1.25 feet or less, or more than 14.5 feet below high-water mark of 1874, on the United States gauge at that point, an underlying stratum of salt water may be confidently anticipated in all the lower reaches of South Pass. During the early stages of ebb tide, or whenever the tide is falling fast, this water may be forming direct currents, running again into the Gulf, or it may be stationary, merely diminishing the cross-section of discharge, or feebly moving up stream, depending on the various conditions presented by tides having various heights of rise and fall, and on the direction and force of the wind. The latter condition being favorable, when the river is still lower, the salt water borne by reverse currents reaches above the

head of the pass, and beyond the limits of my surveys. At such times a very strong north wind does not drive all the salt water from the pass, or even neutralize all the reverse currents if they are near their maximum strength, something over 1.5 feet per second.

Again, with the Carrollton gauge indicating about 9 feet on the 23d of April, 1878, at a station 7,130 feet below East Point, water nearly half-way between fresh and gulf water was pumped up from near the bottom by the dredge Bayley.

The wind had been blowing up stream strongly and persistently for some days. Thus salt water is sometimes found in the lower pass with the river higher than mid-stage at Carrollton.

The steadiness with which salt water has sometimes moved gulfward, for a whole day or more, has led me to the suspicion that occasionally salt water may be fed to one pass by another lying more opposed to the direction of the prevailing wind.

March 6, 1877.—Launch anchored opposite Cory's Base in mid-channel. Total depth of water, 33 feet; time, 5.30 p. m.; tide, 2.16, falling; high water of the day at 1.10 p. m., 2.44; low water of the day at 0.50 a. m., 1.02; reading of the Carrollton gauge 3 p. m., 3.15; wind east, 6 miles per hour. Specimens of water every 8 feet in depth from surface to 30 feet were taken. Water all fresh.

August 14, 1877.—Anchored opposite Station 111 (near end of jetties). Time, 11 a. m.; high water of the day at 0.30 a. m., 2.79; low water of the day at 0.35 p. m., 1.79; reading of Carrollton gauge 3 p. m., 2.90.

Depth.	Specific gravity.	Taste.	Remarks.
29	1.0270	Very salt	
28	1.0186	....do	
25	1.0146	....do	Slight reverse current.
20	1.0167	....do	
15	1.0078	Salt	Current stationary from 17 to 25 feet.
14	1.0048	Brackish	
13	1.0039	Fresh	
12	1.003	....do	

Water all fresh opposite Station 94.

August 17, 1877.—Anchored opposite Station 111 in mid-channel. Time, 2 p. m.; tide, 1.46; high water of the day at 2.10 a. m., 3; low water of the day at 3.10 p. m., 1.50; reading of Carrollton gauge 3 p. m., 2.50.

Depth.	Specific gravity.	Taste.	Remarks.
25	1.0138	Salt	Current positive.
27	1.0156	....do	No current below 25 feet depth.
23	1.0108	....do	
22	1.0073	....do	
20	1.0048	Brackish commences	
18	1.0029	Fresh	

Anchored opposite Station 105 at 3.10 p. m.; found water all fresh and current positive.

August 17, 1877.—Anchored opposite Station 50. Total depth, 84 feet; time, 3.45 p. m.

Depth.	Specific gravity.	Taste.	Remarks.
75	1.0268		Very thick, muddy water.
70		Very salt	Very muddy.
60	1.0176	....do	
50	1.0136	Salt	
48	1.0106	....do	
47	1.0097	....do	
46	1.0026	Fresh	
45	1.0028	....do	
40	1.0028	....do	

August 24, 1877.—Anchored opposite Station 48. Total depth, 91 feet; time, 2.15 p. m.; tide, 2.36 feet; drifted opposite Station 49; depth, 85.5 feet; high water of the day at 8.35 a. m., 2.55; reading of Carrollton gauge at 3 p. m., 1.10.

Depth.	Specific gravity.	Taste.	Remarks.
60	1.0228	Very salt	
70	1.026	....do	Very clear.
71			Quite clear water.
72			Water very muddy.
73			Do.
75			Do.

At 3 p. m. the work was interrupted by a severe wind and rain storm, during which the launch drifted opposite Station 50; depth, 75 feet.

Depth.	Specific gravity.	Taste.	Remarks.
50	1.0248	Very salt	
40	1.0238	....do	Current all positive.
30	1.022	....do	
20	1.0076	Salt	
18	1.0046	Brackish	
16	1.0026	Fresh	

Opposite South Pass light-house; total depth, 33 feet; time, 4 p. m.; tide, 1.80, falling.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0164	Salt	Current positive.
25	1.0126	....do	Do.
22	1.0072	....do	Do.
21	1.0048	Brackish	Do.
20	1.0038	Fresh	Do.
15	1.0028	....do	Do.

Mid-channel, 2,500 feet above South Pass light-house; total depth, 30 feet; time, 4.20 p. m.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0182	Salt	
25	1.0135	... do	
23	1.0044	Brackish	
20	1.003	Fresh	

In mid-channel opposite △ upper base; depth, 33 feet; time, 4.50 p. m.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0154	Salt	
23	1.0046	Brackish	
20	1.0036	Fresh	

In mid-channel, $4\frac{1}{16}$ miles above East Point; time, 5.15 p. m.; tide falling.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0164	Salt	
25	1.0068	Brackish	
24		Fresh	
23		....do	
20	1.0034	....do	

In mid-channel, opposite Bayou Grande; depth, 30 feet; time, 5.40 p. m.; water all fresh.

Limit of salt water somewhere between Bayou Grande and 2 miles below it.

September 6, 1877.—Opposite South Pass light-house; depth, 33 feet; time, 8.30 a. m.; tide, 2.76, falling; high water of the day at 7.45 a. m., 2.80; low water of the day at 6.10 p. m., 1.33; Carrollton gauge at 3 p. m., 0.80; wind south, 7½ miles per hour.

Depth.	Specific gravity.	Taste.	Remarks.
20	1.0128	Salt	
15	1.0078	....do	
13	1.0048	Brackish	
12	1.0038	Fresh	

Opposite Bayou Grande; depth, 30 feet; time, 9 a. m.

Depth.	Specific gravity.	Taste.	Remarks.
28	1.0179	Salt	
20	1.0053	Brackish	
18	1.0038	Fresh	

Opposite foot of Goat Island; depth, 33 feet; time, 9.35 a. m.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0148	Salt	
25	1.0097	....do	
20	1.0046	Brackish	
18	1.0026	Fresh	

Opposite dam No. 3, Head of Passes; depth, 33.5; time, 10 a. m.; tide 2.

Depth.	Specific gravity.	Taste.	Remarks.
30	1.0108	Salt	
25	1.0057	....do	
23	1.0047	Brackish	
22	1.0047	....do	
21	1.0027	Fresh	
20	1.0027	....do	

2,100 feet above cluster No. 2, Head of Passes; water all fresh; 100 feet west of cluster No. 2; depth, 28.5; time, 10.30 a. m.; tide, 2.

Depth.	Specific gravity.	Taste.	Remarks.
28	1.0076	Salt	
25	1.0056	....do	
24	1.0046	Brackish	
23	1.0036	Fresh	
22	1.0026	....do	
20	1.0026	....do	

Moved up stream 250 feet and found water all fresh.

September 14, 1877.—Opposite South Pass light-house; depth, 32.5; time, 10.20 a. m.; tide, 1.58, falling; high water of the day at 0.40 a. m., 3.10; low water of the day at 1.15 p. m., 1.39; Carrollton gauge reading, at 3 p. m., 1.

Depth.	Specific gravity.	Taste.	Remarks.
6	1.0044	Fresh	No reverse current.
12	1.0048	Brackish	Do.
13	1.0073	....do	Do.
18	1.0158	Salt	Do.
24	1.0198		Do.
30	1.0227		Do.
31	1.0232		Do.

September 15, 1877.—Opposite Station 47; total depth, 82 feet; time, 11 a. m.; tide, 1.50; high water of the day at 1.20 a. m., 2.99; low water of the day at 1.55 p. m., 1.50; Carrollton gauge reading, at 3 p. m., 1.20.

Depth.	Specific gravity.	Taste.	Remarks.
75	1.0243	Salt	No reverse current.
70	1.0234	....do	Do.
60	1.0234	....do	Do.
50	1.0234	....do	Do.
40	1.0226	....do	Do.
30	1.0217	....do	Do.
20	1.0178	....do	Do.
12	1.0047	....do	Do.
11	1.0048	....do	Do.
10	1.0042	....do	Do.

September 24, 1877.—Opposite South Pass light-house; depth, 33 feet; time, 1.30 p. m.; tide, 2.72; high water of the day at 9 p. m., 2.82; low water of the day at 7.45 a. m., 1.94; Carrollton gauge reading, at 3 p. m., 0.60; wind north, 8 miles per hour.

Depth.	Specific gravity.	Taste.	Remarks.
6	1.0036	Fresh	
12	1.0036	....do	
16	.....	....do	Neutral current at 22½ feet depth.
18	1.0031	Brackish	
20	1.0061	....do	
24	1.0131	Salt	Reverse current at 25 feet depth.
30	1.0196	....do	
32	1.0206	....do	

September 25, 1877.—In mid-channel, 600 feet above △ tide-gauge; Head of Passes; time, 3 p. m.; tide, 1.50, rising; high water of the day at 11 p. m., 2.70; low water of the day at 10.05 a. m., 1.08; Carrollton gauge reading, at 3 p. m., 0.80.

Depth.	Specific gravity.	Taste.	Remarks.
35	1.0066	Salt	
32	1.0056	....do	
30	1.0051	Brackish	
28	1.0026	Fresh	

October 3, 1877.—Opposite South Pass light-house; depth, 34 feet; time, 10 a. m.; tide, 3.41, falling; high water of the day at 5 a. m., 3.66; low water of the day at 4.45 p. m., 2.37; Carrollton gauge reading, at 3 p. m., 2.50.

Depth.	Specific gravity.	Taste.	Remarks.
Surface	1.0045	Slightly brackish	Current positive.
6	1.0045	Brackish	Do.
12	1.005	Salt	Do.
18	1.006	....do	Do.
24	1.0092	.....	Do.
30	1.0184	....do	Do.
33	1.0194	....do	Do.

October 4, 1877.—Opposite Station 69; depth, 23 feet; time, 10.45 a. m.; tide, 2.62, falling.

Depth.	Specific gravity.	Taste.	Remarks.
22	1.0218	.....	Current positive, but slight, below 15 feet.
18	1.0198	.....	Do.
12	1.0069	.....	Do.
6	1.0044	Brackish	Do.
Surface	1.0034	Slightly brackish	Do.

October 9, 1877.—Opposite South-Pass light-house; depth, 30.2; time, 10.10 a. m.; tide, 1.55, rising.

Depth.	Specific gravity.	Taste.	Remarks.
18	1.002	Brackish.....	
30	1.010	Salt.....	

Date.	Depth.	Specific gravity.	Taste.	Tide.	Carrollton gauge.	High water.	Low water.	Time.		Wind.	
								High water.	Low water.	Direction.	Velocity per hour.
1877.											*Miles.*
Oct. 11, 2.15 p. m..	15	1.0042	Brackish	1.52 rising ...	0.40	2.86	1.08	10.35 a. m.	.....	N.N.E.	12
	29	1.0112	Salt.....								
Oct. 15, 10.15 a. m	15	1.0032	.....	2.40 falling ..	1.80	3.06	2.11	2.10 a. m.	1.05 p. m	S. S. E.	20
	30	1.0162	Salt.....								
Oct. 18, 10.40 a. m	12	1.0062	..do	2.58 falling..	1.10	2.91	2.16	6.45 a. m.	1.10 p. m	S. S. E.	10
	30	1.0252	..do								
Oct. 24, 8.10 a. m..	12	1.0044	..do	0.98 station'ry	0.00	3.09	0.98	.....	7.50 a. m	E.	6
	30	1.0214	..do								
Nov. 3, 3.50 p. m..	24	1.0044	Brackish	2.78 rising ...	1.30	....	....	.....	.....	N. E.	13
	30	1.0076	..do								
Nov. 6, 10 a. m...	15	1.0042	..do	1.50 rising ...	1.40	3.13	1.19	.....	6.20 a. m	N. E.	20
	30	1.0126	Salt....	.....	....	...	....	.....	.....	.....	.....
Nov. 12, 16, 21, 24 .	.....	.....	Water all fresh.	.....	....	...	....	.....	.....	N. to S. S. E.	3 to 7
Nov. 27, 9 a. m....	Surf	1.000	.....	1.53 falling...	2.90	2.88	1.37	1.55 a. m	0.10 p. m	N.	7
	15	1.0018	Brackish	.....	....	....	....	.....	.....	.....	.....
	30	1.0028	..do	.....	....	...	....	.....	.....	.....	.....

Water all fresh through the month of December.

January 17, 1878.—Anchored opposite Station 115 (near end of jetties); total depth, 22.4; time, 11 a. m.; tide, 1.78; high water of the day at 7.20 p. m., 3.09; low water of the day at 7.05 a. m., 1.22; Carrollton gauge reading at 3 p. m., 8 feet; wind east-north-east, 5 miles per hour; water all fresh.

Opposite Station 118; total depth, 24 feet; time, 11.10 a. m.; tide, 1.84.

Depth.	Specific gravity.	Taste.	Remarks.
23	1.0094	Salt.....	
20	1.0072	....do	
18	1.0037	...do	
15	0.9993	Fresh.....	
14	0.9982	....do	

Opposite Station 116; water all fresh.

Opposite Station 116.50; time, 11.50 a. m.; tide, 1.98.

Depth.	Specific gravity.	Taste.	Remarks.
21.5	1.0083	Salt.....	From 17 to surface all fresh.
19	1.0016	..do	Do.
18	.9988	Fresh.....	Do.
17	.9982	....do	Do.

NAVIGABLE DEPTHS IN VARIOUS PARTS OF THE CHANNEL BELOW SOUTH PASS LIGHT-HOUSE.

In continuation of the practice hitherto followed in all the later reports, a table given below shows the depths throughout the successive sections 2,000 feet long, from near South Pass light-house to a point 430 feet beyond the ends of the jetties, which correspond to practicable draughts for vessels passing through these sections of the jetties, without detention at the epochs in question. A vessel may safely be loaded to a draught equal to the minimum depth in a channel 45 feet wide whenever the channel is sufficiently straight throughout. Otherwise, a long vessel is very likely to strike against some point at a bend in a contracted channel where a shorter vessel might be easily and safely steered. Unless the longest steamer might probably be safely steered through a channel 45 feet wide, such a channel is not considered practicable. The deep hole with its superfluous depth is not at present desirable. Occasionally, steering among its eddies becomes difficult, but no grounding accident has occurred solely from this cause.

A comparison of the elements of the table is so readily made that no further remarks on this head are necessary, except to say that the widths of channels of given depths have always been more than ample at all points save on the crest of the bar, and minimum limit of 45 feet for a practicable channel has never been applied elsewhere, unless at the crest of the bar at the Head of the Passes.

The following table gives the depth of water, in feet and tenths of a foot, that could be carried through each 2,000 feet below East Point, at different dates:

Date.	Distances in feet from East Point.					
	0–2,000.	2,000–4,000.	4,000–6,000.	6,000–8,000.	8,000–10,000.	10,000–12,000.
June, 1875	22.5	18.7	16.7	10.2	9.7	9.2
May, 1876	23.3	20.3	22.0	21.0	17.1	15.0
August, 1876	23.5	19.6	21.0	23.5	23.0	19.8
November, 1876	22.0	20.3	21.1	21.2	21.1	20.3
March 16, 1877	24.1	21.1	23.2	22.0	21.2	20.5
April 2, 1877	.....	.....	.....	.....	.....	21.3
April 22, 1877	.....	.....	.....	.....	.....	20.5
May 10, 1877	.....	.....	.....	22.1	21.4	19.5
May 24, 1877	.....	.....	.....	.....	.....	17.8
June 28, 1877	.....	.....	.....	.....	.....	18.0
July 3, 1877	24.9	24.0	.....	.....	23.5	.....
July 7, 1877	.....	.....	.....	23.8	.....	.....
July 8, 1877	.....	.....	26.0	.....	.....	.....
July 28, 1877	.....	.....	.....	.....	.....	20.3
Aug. 30, 1877	.....	.....	.....	.....	.....	20.8
Sept. 28, 1877	.....	.....	.....	.....	.....	20.7
October 25, 1877	.....	24.4	.....	.....	.....	.....
October 31, 1877	.....	.....	.....	.....	.....	21.0
November 3, 1877	26.3	.....	28.5	.....	.....	.....
November 13, 1877	.....	.....	.....	24.2	.....	.....
December 1, 1877	.....	.....	.....	.....	.....	21.3
December 7, 1877	.....	.....	.....	.....	23.0	.....
December 14, 1877	.....	.....	.....	.....	.....	23.7
January 1, 1878	.....	.....	.....	.....	.....	23.0
February 2, 1878	.....	.....	.....	.....	.....	22.8
March 4, 1878	.....	.....	.....	.....	.....	23.2
March 13, 1878	.....	.....	.....	.....	.....	20.5
March 24, 1878	26.0	25.9	.....	.....	.....	.....
March 25, 1878	.....	.....	35.5	.....	.....	.....
March 26, 1878	.....	.....	.....	25,4	.....	.....
March 27, 1878	.....	.....	.....	.....	24.3	.....
April 3, 1878	.....	.....	.....	.....	.....	23.0
April 28, 1878	.....	.....	.....	.....	.....	22.9
May 9, 1878	.....	.....	.....	.....	.....	23.2

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River from December 1, 1877, to March 30, 1878, both dates inclusive.

[Sand having grains over 0.005 of an inch in diameter is called coarse; when the largest grains are less in size than this the sand is called fine. Very fine sand indicates that the largest grains are not much over 0.001 of an inch in diameter, and from this to 0.0001 and less.]

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1877.													
Dec. 1	4.15 p. m..	250 feet from west shore, opposite South Pass light-house.	Surface .	.0002970	2.29	Rising	3.15	2.34	0.99	1.35	6.30 p. m..	4.10 a. m..	All clay; light yellowish tinge.
Do....	....do	.....do	6 feet....	.0003570	.do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 5 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	12 feet...	.0003842	.do ..	....do	.do ..	do ..	.do ..	.do ..	....do	....do	All clay, medium.
Do....	....do	.....do	18 feet...	.0004066	.do ..	....do	do ..	do ..	.do ..	.do ..	....do	....do	About 8 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	24 feet...	.0004841	do ..	....do	.do ..	do ..	.do ..	.do ..	....do	....do	About 12 to 15 per cent. fine and very fine sand; rest light sepia.
Do....	....do	.....do	30 feet...	.0005477	.do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 18 to 20 per cent. fine and very fine sand; rest clay, medium.
Dec. 5	10.35 a. m.	.....do	Surface .	.0003896	1.92	....do	4.40	3.31	1.63	1.68	6.35 p. m..	6.45 a. m..	All clay, medium.
Do....	....do	.....do	15 feet...	.0004973	.do ..	....do	.do ..	do ..	.do ..	.do ..	....do	....do	A trace of fine and very fine sand; rest clay, medium.
Do....	....do	.....do	30 feet...	.0006373	.do ..	....do	do ..	.do ..	do ..	.do ..	....do	....do	About 20 per cent. fine and very fine sand; rest clay, medium.
Dec. 8	12.00 m...	.....do	Surface .	.0005582	1.25	....do	4.60	2.56	1.16	1.40	9.25 p. m..	8.40 a. m..	All clay, medium.
Do....	....do	.....do	15 feet...	.0007952	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 20 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	30 feet...	.0010355	do ..	....do	do ..	.do ..	do ..	.do ..	....do	....do	About 40 per cent. fine and very fine sand; rest clay, medium.
Dec. 12	11.05 a. m.	.....do	Surface .	.0005659	2.10	About stationary.	5.90	2.35	1.95	0.40	6.55 p. m..	9.40 a. m..	About 5 to 8 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	6 feet....	.0006338	.do ..	....do	do ..	do ..	do ..	.do ..	...do	.. do	A trace of very fine sand; rest clay, yellowish tinge.
Do....	....do	.....do	12 feet...	.0008365	.do ..	Rising slightly.	.do ..	.do ..	.do ..	.do ..	....do	....do	About 20 to 25 per cent. fine and very fine sand; rest clay, medium.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrollton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1877.													
Dec. 12	11.05 a. m.	250 feet from west shore, opposite South Pass light-house.	18 feet...	.0008784	2.10	Rising slightly.	5.90	2.35	1.95	0.40	6.55 p. m..	9.40 a. m..	About 10 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	24 feet...	.0009796	do ..	....do	do ..	.do ..	.do ..	do ..	....do	....do	About one-third fine and very fine sand; rest clay, medium.
Do....	....do	.....do	30 feet...	.0010587	do ..	....do	.do ..	do ..	do ..	.do ..	....do	....do	About 20 to 25 per cent. fine and very fine sand; rest clay, medium.
Dec. 16	2.35 p. m..	Opposite light-house, center of pass.	Surface .	.0005189	2.82	Rising	5.65	2.92	1.67	1.25	5.30 p. m..	4.15 a. m..	All clay, medium.
Do....	....do	.....do	8 feet....	.0006800	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	A trace of very fine sand; rest clay, medium.
Do....	... do	.....do	16 feet...	.0007668	do ..	...do	do ..	do ..	do ..	.do ..	....do	....do	About 5 to 10 per cent. fine and very fine sand; rest clay, medium.
Do....	... do	.....do	24 feet...	.0009428	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 20 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	32 feet...	.0011448	.do ..	....do	.do ..	do .	do ..	.do ..	....do	....do	About 40 per cent. fine and very fine sand; rest clay, medium.
Do....	2.55 p. m..	Opposite light-house, half-way between center and east shore.	Surface .	.0004730	do ..	....do	.do ..	do ..	do ..	do ..	....do	....do	All clay.
Do....	....do	.....do	14 feet...	.0007460	.do ..	....do	do ..	do ..	do ..	.do ..	....do	....do	About 10 to 12 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	27 feet...	.0010606	do ..	....do	do ..	do ..	do ..	.do ..	....do	....do	About 25 per cent. fine and very fine sand; rest clay, medium.
Do....	3.18 p. m..	Opposite light-house, half-way between center and west shore.	Surface .	.0006279	do ..	....do	do ..	do ..	do ..	.do ..	....do	....do	About 5 to 10 per cent. fine and very find sand; rest clay, medium.
Do....	....do	.....do	14 feet...	.0007767	.do ..	... do	do ..	.do ..	do ..	do ..	....do	....do	About 18 to 20 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	27 feet...	.0011560	.do ..	....do	.do ..	.do ..	do ..	.do ..	....do	... do	About 20 to 25 per cent. fine and very fine sand; rest clay, light, medium.

Dec. 18	2.20 p. m..	Opposite Cory's base, middle of pass.	Surface..	.0004510	2.83	Rising	5.20	3.46	1.54	1.92	6.50 p. m ..	4.45 a. m ..	No sand; all clay.
Do....	....do	.....do	8 feet....	.0005011	.do ..	....do	.do ..	.do ..	.do ..	do ..	....do	....do	About 15 to 20 per cent. fine sand; rest clay.
Do....	....do	.....do	16 feet...	.0006958	.do ..	....do	.do ..	.do ..	do ..	do ..	....do	... do	About 8 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	..... do	24 feet...	.0007546	.do ..	....do	do ..	.do ..	do ..	do ..	....do	....do	About 5 to 10 per cent. very fine sand; rest clay.
Do....	....do	.....do	32 feet...	.0010321	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-third very fine sand; rest clay, dark.
Do....	2.26 p. m..	Opposite Cory's base, half-way between center and east shore.	Surface..	.0005081	2.85	....do	do ..	.do ..	.do ..	do ..	....do	...do	All clay.
Do....	....do	.....do	13.7 feet	.0006048	.do ..	....do	.do ..	.do ..	.do ..	do ..	....do	...do	About 20 to 25 per cent. very fine sand; rest clay, medium.
Do....	....do	.....do	26.5 feet.	.0008592	.do ..	....do	.do ..	do ..	do ..	do ..	....do	....do	About 20 to 25 per cent. fine and very fine sand; rest clay, quite dark color.
Do....	2.31 p. m..	Opposite Cory's base, half-way between center and west shore.	Surface..	.0004828	2.87	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	All clay, yellowish tinge.
Do....	....do	.....do	16.5 feet	.0006614	.do ..	....do	.do ..	do ..	do ..	.do ..	....do	....do	A trace of fine sand; rest clay, medium.
Do....	....do	.....do	32 feet...	.0013219	.do ..	....do	.do ..	.do ..	do ..	do ..	....do	....do	About one-third sand, fine and coarser; rest clay, dark.
Dec. 24	1.25 p. m..	Opposite Cory's base, middle of pass.	Surface..	.0002787	2.44	....do	5.40	3.40	2.18	1.22	9.10 p. m ..	10.05 a. m .	All clay, very light.
Do....	....do	.....do	8 feet....	.0003457	.do ..	....do	do ..	do ..	.do ..	do ..	....do	....do	A trace of sand; rest clay, very light grey.
Do....	....do	.....do	16 feet...	.0004155	.do ..	... do	.do ..	do ..	.dc ..	do ..	....do	....do	A trace of very fine sand; rest clay.
Do....	....do	.....do	24 feet...	.0004424	do ..	....do	.do ..	.do ..	.do ..	do ..	....do	....do	About 20 per cent. very fine sand; rest clay, light slate.
Do....	....do	.....do	32 feet...	.0005359	do ..	....do	do ..	.do ..	.do ..	do ..	....do	....do	A trace of fine sand + 10 per cent. very fine sand; rest clay, medium.
Do....	....do	Opposite Cory's base, half-way between center and west shore.	Surface..	.0003529	do ..	....do	do ..	.do ..	.do ..	do ..	....do	....do	A trace of very fine sand; rest clay.
Do....	....do	.....do	16 feet...	.0004117	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-sixth sand; rest clay, medium.
Do....	....do	.....do	32 feet...	.0005937	.do ..	....do	do ..	.do ..	.do ..	do ..	....do	....do	About 15 to 20 per cent. fine sand; rest clay.
Do....	....do	Opposite Cory's base, half-way between center and east shore.	Surface..	.0003989	.do ..	....do	.do ..	.do ..	do ..	do ..	....do	... do	No sand; all clay, medium.
Do....	....do	.....do	13 feet...	.0004824	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-fifth sand, fine and coarser; rest clay, medium.
Do....	....do	.....do	26 feet...	.0005367	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 12 to 18 per cent. fine and very fine sand; rest clay, medium.
Jan. 4	4.00 p. m..	At Cory's base, middle of pass.	Surface .	.0003060	2.26	Rising ...	5.80	2.82	1.19	1.63	Lost	9.35 a. m..	A very slight trace of fine sand; rest clay, light yellow.
Do....	....do	.....do	8 feet....	.0004593	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 20 to 25 per cent. fine and very fine sand; rest clay, light sepia, and slate.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1878.													
Jan. 4	4.00 p. m..	At Cory's base, middle of pass.	16 feet...	.0004031	2.26	Rising	5.80	2 82	1.19	1.63	Lost	9.35 a. m ..	About 5 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	24 feet...	.0004600	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 20 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	32 feet...	.0005384	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 10 to 12 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	At Cory's base, half-way between center and east shore.	Surface .	.0003122	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	All clay, medium.
Do....	....do	.....do	14 feet...	.0005492	.do ..	....do	do ..	.do ..	.do ..	do ..	... do	....do	About 25 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	28 feet...	.0006666	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-fourth fine sand; rest clay.
Do....	....do	At Cory's base, half-way between center and west shore.	Surface .	.0003442	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	A trace of fine sand; rest clay, light.
Do....	....do	.....do	13 feet...	.0006480	.do ..	....do	.do ..	.do ..	.do ..	do ..	....do	....do	About 25 to 30 per cent. fine sand; rest clay and vegetable matter, dark.
Do....	....do	.....do	26 feet...	.0009119	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-fifth sand, fine and very fine; rest clay, dark.
Jan. 8	Not taken.	At Cory's base, half-way between center and east shore.	Surface .	.0006457	2.56	....do	7.45	2.84	2.24	0.60	10.50 p. m.	7.30 a. m..	About one-sixth very fine sand.
Do....	....do	.....do	12.5 feet.	.0010061	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 20 per cent. fine and very fine sand; rest clay, medium.
Do....	....do	.....do	25 feet...	.0011005	.do ..	....do	.do ..	.do ..	do ..	.do ..	....do	....do	About one-third fine and very fine sand; rest clay, dark.
Jan. 13	11.00 a. m .	At Cory's base, middle of pass	Surface .	.0009538	2.72	....do	8.20	2.80	1.98	0.82	3.55 p. m..	3.55 a. m..	About 10 per cent. very fine sand; rest clay, dark.
Do....	....do	.....do	8 feet....	.0012243	.do ..	....do	do ..	do ..	.do ..	.do ..	....do	....do	About one-third very fine sand, and some yet finer; less than one-half clay probably, dark color.
Do....	....do	.....do	16 feet...	.0012864	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	.. do	About 25 to 30 per cent. very fine sand; medium.

Do	do	do	24 feet	.0014461	do	do	do	do	do	do	do	do	About 50 per cent. fine and very fine sand; dark.
Do	do	do	32 feet	.0015578	do	do	do	do	do	do	do	do	Over one-half fine and very fine sand; rest clay, salts, dark.
Do	do	At Cory's base, half-way between center and west shore.	Surface	.0010274	do	do	do	do	do	do	do	do	About 20 per cent. very fine sand; rest clay, medium.
Do	do	do	17 feet	.0013269	do	do	do	do	do	do	do	do	About one-half sand, fine and very fine; rest clay, quite dark.
Do	do	do	35.5 feet	.0014708	do	do	do	do	do	do	do	do	About one-half fine sand; rest clay, dark.
Do	do	At Cory's base, half-way between center and east shore.	Surface	.0010236	do	do	do	do	do	do	do	do	About 20 per cent. sand, fine and very fine; rest clay.
Do	do	do	14 feet	.0013056	do	do	do	do	do	do	do	do	About one-third very fine sand; rest clay, dark.
Do	do	do	27 feet	.0029204	do	do	do	do	do	do	do	do	About 50 to 60 per cent. fine sand; rest clay, dark.
Jan. 17	9.15 a. m.	At Cory's base, middle of pass	Surface	.0007409	1.38	Rising	8.00	3.14	1.27	1.87	7.20 p. m.	7.05 a. m.	About 20 per cent. fine and very fine sand; rest clay, medium.
Do	do	do	8 feet	.0008824	do	do	do	do	do	do	do	do	About 17 per cent. fine and very fine sand; rest clay, medium.
Do	do	do	16 feet	.0015483	do	do	do	do	do	do	do	do	About half very fine sand; rest clay.
Do	do	do	24 feet	.0015929	do	do	do	do	do	do	do	do	About 40 per cent. fine and very fine sand; rest clay, medium.
Do	do	do	32 feet	.0016022	do	do	do	do	do	do	do	do	About 75 per cent. fine and very fine sand; rest clay, light.
Do	9.30 a. m.	At Cory's base, half-way between center and west shore.	Surface	.0009755	1.44	do	do	do	do	do	do	do	About 5 to 10 per cent. sand; rest clay, slate color.
Do	do	do	15.6 feet	.0012494	do	do	do	do	do	do	do	do	About half sand, fine and very fine; rest clay, medium.
Do	do	do	30.0 feet	.0013875	do	do	do	do	do	do	do	do	About half sand, maximum diameter $\frac{3}{1000}$ to $\frac{4}{1000}$ mostly much finer; rest clay.
Do	9.40 a. m	At Cory's base, half-way between center and east shore.	Surface	.0005865	1.48	do	do	do	do	do	do	do	About 15 to 20 per cent. fine sand; rest clay.
Do	do	do	14 feet	.0013256	do	do	do	do	do	do	do	do	About 50 to 60 per cent. fine and very fine sand; rest clay, light grey.
Do	do	do	27 feet	.0015268	do	do	do	do	do	do	do	do	Over half sand, from $\frac{1}{1000}$ and less to $\frac{3}{1000}$ inch in diameter.
Jan. 19	0.15 p. m.	At Cory's base, middle of pass	Surface	.0007508	2.23	do	8.40	3.03	1.46	1.57	7.40 p. m.	7.15 a. m.	About 5 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do	do	do	8 feet	.0009102	do	do	do	do	do	do	do	do	About 35 to 40 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do	do	do	16 feet	.0010883	do	do	do	do	do	do	do	do	About 25 to 30 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1878. Jan. 19	0.15 p. m..	At Cory's base, middle of pass	24 feet ..	.0010911	2.23	Rising	8.40	3.03	1.46	1.57	7.40 p. m..	7.15 a. m..	About 22 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	32 feet...	.0011901	..do .	....do	..do .	..do .	..do	..do .	....do	....do	About 20 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	0.25 p. m.	At Cory's base, half-way between center and west shore.	Surface .	.0007758	2.24	....do	..do .	..do .	. do .	..do .	....do	....do	Do.
Do....	....do	.....do	15 feet...	.0009396	..do .	....do	..do .	..do .	..do .	..do .	....do	....do	About 16 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	29 feet...	.0009760	..do .	....do	..do .	..do	..do .	..do	....do	....do	About 15 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	0.35 p. m.	Half-way between center and east shore.	Surface .	.0006645	2.25	....do	..do .	..do .	..do .	..do .	....do	....do	About 5 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	14.7 feet	.0010417	..do .	....do	..do .	..do .	..do .	..do .	....do	....do	About 22 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	28.0 feet	.0013315	..do .	....do	..do .	..do .	..do	..do .	....do	....do	About 25 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Jan. 22	2.20 p. m.	At Cory's base, center of pass	Surface .	.0005578	2.00	Stationary.	7.90	2.02	1.65	0.37	9.15 p. m.	9.15 a. m.	About 3 to 5 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.

Do....	....do	.....do	8 feet....	.0005985	..do .	....do	do .	..do .	..do .	..do .	....do	....do	About 6 to 8 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	16 feet...	.0007555	..do .	....do	..do .	..do .	..do .	..do .	....do	....do	About 15 per cent. sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	24 feet...	.000858[illegible]	..do	....do	..do	..do .	..do .	..do	....do	....do	About 20 to 25 per cent sand, a few grains $\frac{5}{1000}$ of an inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	31 feet ..	.0028571	..do .	....do	..do	..do .	..do	..do	... do	....do	About 20 per cent. sand, fine and coarse; rest clay; medium slate color.
Do....	2. 30 p. m..	At Cory's base, half-way between center and west shore.	Surface..	.0006394	2. 00	Stationary	7. 90	2. 02	1. 65	0. 37	9. 15 p. m ..	9. 15 a. m ..	About 10 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	16. 5 feet	.0009089	..do .	....do	do ..	do ..	do ..	do ..	... do	... do	About 25 to 30 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Do...	...do	.....do	31. 0 feet	.0021858	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	About 33 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Do....	2. 40 p. m..	Half-way between center and east shore.	Surface..	.0006273	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	About 6 to 8 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	13. 5 feet	.0009927	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	About 15 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Do....	....do	.....do	26. 0 feet	.0009933	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. sand, a few grains $\frac{5}{1000}$ inch in diameter, mostly much smaller; rest clay.
Jan. 27	4. 09 p. m..	Half-way between center and west shore.	Surface..	.0003711	2. 76	Falling....	7. 50	2. 91	1. 48	1. 43	3. 40 p. m ..	2. 30 a. m ..	A slight trace of sand, about 5 to 7 per cent.; rest clay.
Do....	....do	.....do	16½ feet.	.0004994	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	32 feet...	.0006829	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	4. 19 p. m..	At Cory's base, center of pass	Surface..	.0003821	..do	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	8 feet....	.0004607	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	16 feet...	.0005099	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	24 feet...	.0005243	..do	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	33 feet...	.0005437	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	4. 29 p. m..	At Cory's base, half-way between center and east shore.	Surface..	.0004370	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	15 feet...	.0005238	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	29 feet...	.0005743	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1878.													
Jan. 29	1.45 p. m..	Half-way between center and west shore.	Surface..	.0004617	2.88	Rising	7.80	3.45	1.54	1.91	6.15 p. m ..	4.30a. m ..	A slight trace of sand, about 5 to 7 per cent.; rest clay.
Do....	....do	.....do	14.1 feet	.0005486	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	27.0 feet	.0005743	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	2.00 p. m..	At Cory's base, center of pass.	Surface..	.0004185	2.90	....do	do ..	do ..	do ..	do ..	....do	... do	Do.
Do....	....do	.....do	8 feet....	.0005103	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	16 feet...	.0005562	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....do	24 feet...	.0006020	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	...do	.....do	33 feet...	.0006476	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	2.15 p. m..	At Cory's base, half-way between center and east shore.	Surface..	.0004687	2.92	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....	15 feet...	.0006730	..do	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Do....	....do	.....	29 feet...	.0006974	..do .	....do	do ..	do ..	do ..	do ..	....do	....do	Do.
Feb. 2	.....	At Cory's base, center of pass .	Surface .	.0003554	.....	.....	8.30	2.88	1.44	1.44	9.40 p. m ..	6.45 a. m ..	A trace of fine and very fine sand; rest clay.
Do...	.....	.....do	8 feet....	.0005291	.....	.....	do ..	do ..	do ..	do ..	....do	....do	15 per cent. fine and very fine sand; rest clay.
Do....	.....	.....do	16 feet...	.0006156	.....	.....	do ..	do ..	do ..	do ..	....do	....do	About one-third sand, fine and very fine; rest clay.
Do....	.....	.....do	24 feet...	.0007005	.....	.....	do ..	do ..	do ..	do ..	....do	....do	Over one-fourth very fine sand; rest clay.
Do....	.....	.....do	32 feet...	.0006475	.....	.....	do ..	do ..	do ..	do ..	....do	....do	About one-fifth sand, fine and very fine, a few grains barely $\frac{5}{1000}$ inch in diameter; rest clay.
Do....	.....	At Cory's base, half-way between center and west shore.	Surface .	.0005757	.....	.....	do ..	do ..	do ..	do ..	....do	....do	A trace of sand, fine and very fine; rest clay.
Do....	.....	.....do	17 feet...	.0006335	.....	.....	do ..	do ..	do ..	do ..	....do	....do	About one-third sand, fine and very fine; rest clay.
Do....	.....	.....do	33 feet...	.0007107	.....	.....	do ..	do ..	do ..	do ..	... do	... do	Do.
Do....	.....	Half-way between center and east shore.	Surface .	.0006176	.....	.....	do ..	do ..	do ..	do ..	....do	....do	A trace of very fine sand; rest clay and vegetable matter.
Do....	.....	.....do	14 feet...	.0007309	.....	.....	do ..	do ..	do ..	do ..	....do	....do	About one-half very fine sand; rest clay.

Do		do	27 feet	.0006625			do	do	do	do	do	do	About one-third sand, fine and very fine; rest clay.
Feb. 6	5.00 p. m.	At Cory's base, center of pass	Surface	.0006200	2.55	Rising	8.40	3.04	1.92	1.12	7.40 p. m.	5.05 a. m.	About 10 per cent. very fine sand; rest clay.
Do	do	do	8 feet	.0006374	do	do	do	do	do	do	do	do	About one-fifth sand, very fine, few fine grains; rest clay.
Do	do	do	16 feet	.0007336	do	do	do	do	do	do	do	do	About one-fourth sand, fine and very fine, few coarse grains; rest clay.
Do	do	do	24 feet	.0008074	do	do	do	do	do	do	do	do	About one-fifth sand, very fine, few fine grains; rest clay.
Do	do	do	33 feet	.0008327	do	do	do	do	do	do	do	do	About one-eighth very fine sand; rest clay.
Do	5.20 p. m.	At Cory's base, half-way between center and west shore.	Surface	.0005539	2.57	do	do	do	do	do	do	do	About 10 per cent. very fine sand; rest clay.
Do	do	do	13.5 feet	.0006000	do	do	do	do	do	do	do	do	About one-eighth very fine sand rest clay.
Do	do	do	26.5 feet	.0006187	do	do	do	do	do	do	do	do	About one-tenth sand, fine and very fine; rest clay.
Do	5.40 p. m.	Half-way between center and east shore.	Surface	.0007112	2.60	do	do	do	do	do	do	do	About 10 per cent. very fine sand; rest clay.
Do	do	do	13.5 feet	.0008379	do	do	do	do	do	do	do	do	Do.
Do	do	do	26.0 feet	.0012382	do	do	do	do	do	do	do	do	Do.
Feb. 9	2.05 p. m.	Half-way between center and west shore.	Surface	.0004231	2.89	do	8.60	2.88			1.45 p. m.		A trace of sand, fine and very fine; rest clay.
Do	do	do	16½ feet	.0005863	do	do	do	do			do		Do.
Do	do	do	33.0 feet	.0006809	do	do	do	do			do		About 10 per cent. sand fine and very fine; rest clay.
Do	2.15 p. m.	At Cory's base, center of pass	Surface	.0004600	2.90	do	do	do			do		A trace of sand, fine and very fine; rest clay.
Do	do	do	8 feet	.0005624	do	do	do	do			do		Do.
Do	do	do	16 feet	.0006826	do	do	do	do			do		About 20 per cent. sand fine and very fine; rest clay.
Do	do	do	24 feet	.0006555	do	do	do	do			do		About 10 per cent. very fine sand; rest clay.
Do	do	do	32 feet	.0007478	do	do	do	do			do		About 15 per cent. very fine sand; rest clay.
Feb. 9	2.22 p. m.	At Cory's base, half-way between center and east shore.	Surface	.0005911	2.90	Rising	8.60	2.88			1.45 p. m.		About 12 per cent. very fine sand; rest clay.
Do	do	do	13 feet	.0007698	do	do	do	do			do		All clay, except a trace of very fine sand.
Do	do	do	26 feet	.0008463	do	do	do	do			do		Do.
Feb. 12	8.07 a. m.	Half-way between center and west shore.	Surface	.0005294	1.55	do	8.85	2.99	1.28	1.71	6.30 p. m.	3.35 a. m.	Do.
Do	do	do	15 feet	.0005701	do	do	do	do	do	do	do	do	A trace of sand, fine and very fine; rest clay.
Do	do	do	29 feet	.0011405	do	do	do	do	do	do	do	do	All clay, except a trace of very fine sand.
Do	8.12 a. m.	At Cory's base, center of pass	Surface	.0005000	1.56	do	do	do	do	do	do	do	All clay.
Do	do	do	8 feet	.0005968	do	do	do	do	do	do	do	do	A trace of very fine sand; rest clay.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.					
								High water.	Low water.	Difference.	Time.		
											High water.	Low water.	
1878.													
Feb. 12	8.12 a. m..	At Cory's base, center of pass	16 feet ..	.0006525	1.56	Rising	8.85	2.99	1.28	1.71	6.30 p. m..	3.35 a. m..	About 12 per cent. very fine sand; rest clay.
Do....	....do	.....do	24 feet ..	.0006683	do ..	...do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. very fine sand; rest clay.
Do....	....do	.....do	31 feet ..	.0007138	do ..	....do	do ..	do ..	do ..	do ..	.. .do	....do	About 15 per cent. very fine sand; rest clay.
Do....	8.30 a. m..	At Cory's base, half-way between center and east shore.	Surface .	.0003873	1.58	....do	do ..	do ..	do ..	do ..	....do	...do	All clay.
Do....	....do	.....do	13 feet ..	.0007031	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 8 per cent. fine and very fine sand; rest clay.
Do....	....do	.....do	26 feet ..	.0007931	do ..	....do	do ..	do ..	do ..	do ..	.. do	....do	Do.
Feb. 15	4.55 p. m..	Half-way between center and west shore.	Surface .	.0006355	2.80	....do	9.50	3.11	1.48	1.63	7.40 p. m..	7.00 a. m..	About one-twelfth sand, fine and very fine; rest clay.
Do....	....do	.....do	14 feet ..	.0007518	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-tenth sand, fine and very fine; rest clay.
Do....	....do	.....do	26 feet ..	.0007345	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-eighth sand, fine and very fine; rest clay.
Do....	5.04 p. m..	At Cory's base, center of pass	Surface .	.0005835	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	A trace of sand, fine and very fine; rest clay.
Do....	....do	.....do	8 feet ..	.0007056	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-sixth sand, fine and very fine; rest clay.
Do....	....do	.....do	16 feet ..	.0007443	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-tenth sand, fine and very fine; rest clay.
Do....	....do	.....do	24 feet ..	.0008161	do ..	...do	do ..	do ..	do ..	do ..	....do	....do	About one-sixth sand, fine and very fine; rest clay.
Do....	...do	.....do	33 feet ..	.0008039	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.
Do....	5.13 p. m..	At Cory's base, half-way between center and east shore.	Surface .	.0005700	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	A trace of sand, fine and very fine; rest clay.
Do....	.. do	.....do	14 feet ..	.0007510	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fifth sand, fine and very fine; rest clay.
Do....	...do	.....do	27 feet ..	.0009957	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.
Feb. 19	2.26 p. m..	.....do	Surface .	.0007031	2.31	Falling ...	do ..	.....	2.23	.....	.....	9.20 a. m..	About one-sixth sand, fine and very fine; rest clay.

Do....	....do	.....do	14 feet ..	.0009509	.do ..	....do	.do ..	.....	.do ..	.....	.....	....do	About one-fifth sand, fine and very fine; rest clay.
Do....	....do	.....do	27 feet ..	.0008723	.do ..	....do	.do ..	.....	do ..	.....	.....	...do	About one-sixth sand, fine and very fine; rest clay.
Do....	2.30 p. m..	At Cory's base, center of pass	Surface .	.0008017	2.30	....do	do ..	.....	do ..	.....	.....	....do	Do.
Do....	....do	.....do	8 feet ..	.0008914	.do ..	....do	do ..	.....	.do ..	.....	.....	....do	About one-fourth sand, fine, and very few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.
Do....	....do	.....do	16 feet ..	.0007895	.do ..	....do	.do ..	.....	.do ..	.....	.....	....do	About one-sixth sand, fine and very fine; rest clay.
Do....	....do	.....do	24 feet ..	.0007950	.do ..	....do	do ..	.....	.do ..	.....	.....	....do	A trace of sand, fine and very fine; rest clay.
Do....	....do	.....do	32 feet ..	.0008799	.do ..	....do	.do ..	.....	.do ..	.....	.....	....do	About one-fifth sand, fine, and very few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.
Do....	2.40 p. m..	At Cory's base, half-way between center and west shore.	Surface .	.0006738	2.29	....do	.do ..	.....	do ..	.....	.....	....do	About one-sixth sand, fine and very fine; rest clay.
Do....	....do	.....do	15 feet ..	.0007784	do ..	....do	.do ..	.....	.do ..	.....	.....	....do	Do.
Do....	....do	.....do	28 feet ..	.0008379	.do ..	....do	.do ..	.....	.do ..	.....	.....	....do	About one-fifth sand, fine and very fine; rest clay.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.						Velocity at a fixed point in main thread of current at one-half actual mean depth of cross-section, in feet per second.
								High water.	Low water.	Difference.	Time.			
											High water.	Low water.		
1878.														
Feb. 23	1.51 p. m..	At Cory's base, halfway between center and west shore.	Surface .	.0005560	3.14	Falling ...	9.50	3.24	2.07	1.17	1.25 p. m..	1.15 a. m..	About one-sixth sand, fine and very fine; rest clay.	3.463
Do....	....do	.....do	13.5 feet.	.0006350	.do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.
Do....	...do	.....do	27.0 feet	.0006943	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fifth sand, fine and very fine; rest clay.	Do.
Do....	2.00 p. m..	At Cory's base, center of pass.	Surface .	.0006943	3.13	....do	do ..	do ..	do ..	do ..	....do	....do	All clay	Do.
Do....	....do	.....do	8 feet ...	.0006556	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-sixth very fine sand, rest clay.	Do.
Do....	....do	.....do	16 feet ..	.0007080	.do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.
Do....	... do	..... do	24 feet ..	.0007195	.do ..	....do	do ..	.do ..	.do ..	do ..	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	33 feet ..	.0009104	.do ..	....do	.do ..	.do ..	.do ..	.do ..	... do	....do	About one-third sand, fine and very fine; rest clay.	Do.
Do....	2.10 p. m..	At Cory's base, half way between center and east shore.	Surface	.0005510	3.11	....do	do ..	do ..	do ..	do ..	....do	....do	A trace of sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	14 feet ..	.0008994	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-fifth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	26.5 feet.	.0009218	.do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Feb. 26	2.00 p. m..	At Cory's base, halfway between center and west shore.	Surface .	.0006021	2.90	Rising	9.60	3.36	1.75	1.61	5.30 p. m..	3.25 a. m..	About 12 per cent. sand, fine and very fine; rest clay.	3.164
Do....	....do	.....do	15.5 feet.	.0007569	.do ..	... do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-sixth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	29.0 feet.	.0006903	.do ..	...do	do ..	do ..	do ..	.do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.
Do....	2.09 p. m..	At Cory's base, center of pass.	Surface .	.0005551	2.93	....do	.do ..	.do ..	.do ..	do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.

Do	...do	...do	8 feet	.0006568	do	...do	.do	.do	.do	.do	....do	....do	About one-fifth sand, fine and very fine, a very few coarse grains $\frac{6}{1000}$ inch in diameter; rest clay.	Do.
Do	....do	....do	16 feet	.0006721	do	....do	.do	.do	do	.do	....do	....do	About 15 per cent. sand, fine and very fine; rest clay.	Do.
Do	....do	....do	24 feet	.0008227	do	....do	.do	.do	.do	do	....do	....do	.....do	Do.
Do	....do	....do	33 feet	.0007913	do	....do	do	.do	.do	do	... do	....do	About one-third sand, fine and very fine, a very few coarse grains $\frac{6}{1000}$ inch in diameter; rest clay.	Do.
Do	2.25 p. m.	At Cory's base, halfway between center and east shore.	Surface	.0007395	2.96	...do	do	.do	.do	.do	....do	....do	About one-third sand, fine and very fine; rest clay.	Do.
Do	....do	....do	13.5 feet	.0007834	do	....do	do	.do	do	.do	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Do	....do	....do	27 feet	.0009746	do	...do	do	do	.do	do	....do	....do	About one-half sand; fine and very fine, a few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter.	Do.
Mar. 2	1.40 p. m.	At Cory's base, halfway between center and west shore.	Surface	.0005633	2.47	....do	10.10	2.82	2.17	0.65	7.40 p. m.	8.55 a. m.	About one-sixth sand, fine and very fine; rest clay.	4.149
Do	....do	....do	17 feet	.0007733	do	....do	.do	.do	.do	.do	....do	....do	About one-fifth sand, fine and very fine; rest clay.	Do.
Do	....do	....do	32 feet	.0008435	do	....do	do	.do	do	.do	....do	....do	About 40 per cent. sand, fine and very fine; rest clay.	Do.
Do	1.47 p. m.	At Cory's base, center of pass.	Surface	.0005081	do	....do	do	.do	.do	.do	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do	....do	....do	8 feet	.0007160	do	....do	do	.do	.do	.do	....do	....do	About 50 per ct. sand, fine and very fine; rest clay.	Do.
Do	....do	....do	16 feet	.0008452	do	....do	do	do	.do	do	....do	....do	About 30 per cent. sand, fine and very fine; rest clay.	Do.
Do	....do	....do	24 feet	.0009512	do	....do	do	.do	.do	.do	....do	....do	Over one-third sand, fine and very fine, with a very few grains of coarse, $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter.	Do.
Do	....do	....do	32 feet	.0009440	do	....do	do	do	do	do	....do	... do	About one-half sand, fine and very fine, with a very few grains of coarse, $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter.	Do.
Do	1.55 p. m.	At Cory's base, halfway between center and east shore.	Surface	.0005375	2.48	... do	do	do	do	do	....do	....do	A trace of sand, fine and very fine; rest clay.	Do.
Do	....do	....do	14 feet	.0009090	do	....do	do	do	do	do	....do	....do	Over one-third sand, fine and very fine; rest clay.	Do.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood-tide.						Velocity at a fixed point in main thread of current at one-half actual mean depth of cross-section, in feet per second.
								High water.	Low water.	Difference.	Time.			
											High water.	Low water.		
1878.														
Mar. 2	1.55 p. m..	At Cory's base, halfway between center and east shore.	26.5 feet	.0011262	2.48	Rising	10.10	2.82	2.17	0.65	7.40 p. m..	8.55 a. m..	About one-half sand, fine and very fine, with a few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.	4.149
Mar. 5	3.25 p. m..	.....do	Surface .	.0005252	2.03	Stationery.	do ..	2.26	2.02	0.24	12 p. m....	4.50 p. m..	About 10 per cent. sand, fine and very fine; rest clay.	4.166
Do....	....do	.....do	14 feet ..	.0009302	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 30 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	26.5 feet.	.0012260	do ..	....do	.do ..	.do ..	do ..	.do ..	....do	... do	About one-half sand, fine and very fine; rest clay.	Do.
Do....	3.35 p. m..	At Cory's base, center of pass.	Surface .	.0005958	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 15 per ct. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	8 feet ...	.0006760	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 30 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet ..	.0008422	do ..	....do	do ..	.do ..	do ..	.do ..	....do	....do	.....do	Do.
Do....	....do	.....do	24 feet ..	.0009453	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 40 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	32 feet ..	.0012906	do ..	....do	.do ..	.do ..	.do ..	do ..	....do	....do	About two-thirds sand, fine and very fine, a few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.	Do.
Do....	3.45 p. m..	At Cory's base, halfway between center and west shore.	Surface .	.0007159	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-fifth sand, very fine; rest clay.	Do.
Do...	....do	.....do	17.5 feet.	.0008956	do ..	....do	do ..	.do ..	do ..	.do ..	....do	....do	Nearly one-half sand, fine and very fine, a few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.	Do.
Do....	....do	.....do	33 feet ..	.0009978	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.

Mar. 9	1.42 p. m..	Cory's base half-way between center and east shore.	Surface.	.0007846	3.40	Falling....	10.50	3.52	2.59	0.93	11.35 a. m.	11.50 p. m.	About 10 per cent. sand, fine and very fine; rest clay.	3.484
Do....	....do	.....do	13.5 feet.	.0011641	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	Over one-half sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	25 feet ..	.0012452	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About two-thirds sand, fine and very fine; mostly sand.	Do.
Do....	1.55 p. m..	Cory's base, center of pass.	Surface.	.0005910	3.39	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	All clay	Do.
Do....	....do	.....do	8 feet ...	.0007447	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 25 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet ..	.0009908	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 30 per cent. sand, fine and very fine, mostly fine; rest clay.	Do.
Do....	....do	.....do	24 feet ..	.0009648	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 16 per ct. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	31 feet ..	.0011595	do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 60 per cent. sand, fine and very fine; rest clay.	Do.
Do....	2.00 p. m..	Cory's base, half-way between center and west shore.	Surface.	.0007217	3.39	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	14.5 feet.	.0007526	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-eighth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	27 feet ..	.0011405	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-third sand, fine and very fine; rest clay.	Do.
Mar. 12	....do	Cory's base, half-way between center and east shore.	Surface	.0008275	3.52	Rising	10.40	3.55	2.29	1.26	2.40 p. m..	1.05 a. m..	About 25 per cent. sand, fine and very fine; rest clay.	3.610
Do....	....do	.....do	13.5 feet.	.0010290	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 30 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	25 feet...	.0013825	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	.....do	Do.
Do....	2.10 p. m..	Cory's base, center of pass.	Surface .	.0004841	3.53	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	All clay	Do.
Do....	....do	.....do	8 feet....	.0011087	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 40 per cent. sand, fine and very fine; a very few large grains; 3 found .015 inch in diameter.	Do.
Do....	....do	.....do	16 feet...	.0011698	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About one-third sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	24 feet...	.0013462	..do .	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 60 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	33 feet...	.0015954	..do .	....do	.do ..	.do ..	.do ..	.do...	....do	....do	About two-thirds sand, fine and very fine; mostly very fine; rest clay.	Do.
Do....	2.20 p. m..	Cory's base, half-way between center and west shore.	Surface .	.0005988	3.54	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	A trace of sand, fine and very fine; rest clay.	Do.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water, by weight.	Tide.		Carrolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood tide.						Velocity at a fixed point in main thread of current at one-half actual mean depth of cross-section, in feet per second.
								High water.	Low water.	Difference.	Time.			
											High water.	Low water.		
1878.														
Mar. 12	2.20 p. m..	Cory's base, half-way between center and west shore.	16 feet...	.0011032	3.54	Rising	10.40	3.55	2.29	1.26	2.40 p. m..	1.05 a. m..	Over one-third sand, fine and very fine; rest clay.	3.610
Do....	....do	.....do	30.5 feet.	.0012590	..do .	....do	do ..	.do ..	.do ..	.do ..	....do	....do	About 60 per cent. sand, fineand very fine, mostly very fine; rest clay.	Do.
Mar. 16	4.32 p. m..	Cory's base, half-way between center and east shore.	Surface .	.0004538	2.96	....do	10.75	3.20	.....	.....	6.35 p. m..	.....	All clay	4.000
Do....	....do	.....do	13.2 feet.	.0009161	..do .	....do	do ..	.do ..	.....	.....	....do	.....	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	24.5 feet.	.0013298	..do .	....do	.do ..	.do ..	.....	.....	....do	.....	.....do	Do.
Do....	4.40 p. m..	Cory's base, center of pass.	Surface .	.0007026	2.97	... do	.do ..	do ..	.....	.....	....do	.....	.....do	Do.
Do....	....do	.....do	8 feet....	.0008250	..do .	....do	.do ..	.do ..	.....	.....	....do	.....	About one-twelfth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet...	.0012265	..do .	....do	.do ..	.do ..	.....	.....	....do	.....	About one-fifth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	24 feet...	.0012420	..do .	....do	.do ..	do ..	.....	.....	....do	.....	About 40 per cent. sand, fine-and very fine; rest clay.	Do.
Do....	....do	.....do	32 feet...	.0013268	..do .	....do	.do ..	.do ..	.....	.....	....do	.....	About 60 per ct. sand, fine and very fine; rest clay.	Do.
Do....	4.54 p. m..	Cory's base, half-way between center and west shore.	Surface .	.0006846	3.00	....do	do ..	.do ..	.....	.....	....do	.....	About one-eighth sand, fine and very fine; rest clay.	Dc.
Do....	....do	.....do	18 feet...	.0008212	..do .	....do	.do ..	.do ..	.....	.....	....do	.....	About one-sixth sand, fine and very fine; rest clay.	Do.
Do....	....do.	.....do	34 feet...	.0014653	..do .	....do	.do ..	do ..	.....	.....	....do	.....	About one-half sand, fine and very fine and coarse up to .01 inch in diameter; rest clay.	Do.

Mar. 19	2.30 p. m..	Cory's base, half-way between center and east shore.	Surface .	.0008565	2.47	Falling ...	11.10	2.97	2.40	0.57	9.40 a. m ..	4.55 p. m ..	About one-fourth sand, fine and very fine; rest clay.	4.184
Do....	....do	.....do	13.5 feet.	.0011489	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 25 per cent. sand, fine and very fine; rest clay.	Do.
Do....	... do	.....do	26 feet ..	.0015005	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	Nearly two-thirds sand, fine and very fine, a very few grains $\frac{5}{1000}$ to $\frac{7}{1000}$ inch in diameter; rest clay.	Do.
Do....	2.38 p. m..	Cory's base, center of pass.	Surface .	.0007164	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-twelfth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	8 feet ...	.0008413	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-sixth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet ..	.0010093	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	24 feet ..	.0011322	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Do....	...do	.....do	32 feet ..	.0013540	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 60 per cent. sand, fine and very fine; rest clay.	Do.
Do....	2.48 p. m..	Cory's base, half-way between center and west shore.	Surface .	.0007947	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16.5 feet.	.0009347	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-fourth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	32 feet ..	.0010186	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 20 per cent. sand, fine and very fine; rest clay.	Do.
Mar. 23	10.00 a. m.	Cory's base, half-way between center and west shore.	Surface .	.0006782	3.16	Stationary	11.00	3.27	1.93	1.34	11.05 a. m .	11.50 p. m .	About 8 per cent. very fine sand; rest clay.	3.846
Do....	....do	.....do	14 feet ..	.0007747	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-sixth sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	26 feet ..	.0008227	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 12 per cent. sand, fine and very fine; rest clay.	Do.
Do....	10.07 a. m.	Cory's base, center of pass.	Surface .	.0004120	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	All clay.....	Do.
Do....	....do	.....do	8 feet ...	.0006652	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet ..	.0009524	do ..	....do	do ..	do ..	do ..	do ..	....do	...do	About 25 per cent. sand, fine and very fine, with a very few grains $\frac{5}{1000}$ to $\frac{8}{1000}$ inch in diameter; rest clay.	Do.
Do....	....do	.....do	24 feet ..	.0010216	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 25 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	33 feet ..	.0010095	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 20 per ct. sand, fine and very fine; rest clay.	Do.

Table exhibiting the results of analysis for sediment of samples of water taken from South Pass of the Mississippi River, &c.—Continued.

Date.	Time.	Location.	Depth at which specimen was taken.	Ratio of sediment to water, by weight.	Tide.		Carolton gauge.	Maximum and minimum reading of gauge, time, and difference of same, 2.76 feet being the reading for average flood tide.						Velocity at a fixed point in main thread of current at one-half actual mean depth of cross-section, in feet per second.
								High water.	Low water.	Difference.	Time.			
											High water.	Low water.		
1878.														
Mar. 23	10.20 a. m.	Cory's base, half-way between center and east shore.	Surface	.0004193	3.16	Stationary	11.00	3.27	1.93	1.34	11.05 a. m..	11.50 a. m..	All clay	3.846
Do....	....do	.....do	15 feet ..	.0010043	.do ..	....do	.do ..	.do ..	.do ..	.do ..	....do	....do	About 25 per ct. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	28 feet ..	.0013497	do ..	....do	do ..	.do ..	.do ..	.do ..	....do	....do	Over one-half sand, fine and very fine; rest clay.	
Mar. 26	3.40 p. m..	Cory's base, half-way between center and west shore.	Surface .	.0006562	3.00	Falling....	.do ..	3.14	1.96	1.18	3.40 p. m .	4.05 a. m ..	About 8 per cent. sand, fine and very fine; rest clay.	3.952
Do...	....do	.....do	18.2 feet	.0009178	.do ..	....do	.do ..	.do ..	do ..	do ..	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	34 feet ..	.0010574	.do ..	....do	do ..	.do ..	do ..	do ..	....do	....do	About 40 per cent. sand, fine and very fine, one grain found $\frac{6}{1000}$ inch in diameter; rest clay.	Do.
Do....	3.47 p. m..	Cory's base, center of pass.	Surface .	.0006466	2 99	...do	do ..	.do ..	do ..	do ..	....do	....do	About 8 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	8 feet....	.0007721	do ..	....do	.do ..	.do ..	do ..	do ..	....do	....do	About 12 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet...	.0008218	do ..	....do	do ..	do ..	.do ..	do ..	...do	....do	.....do	Do.
Do....	...do	.....do	24 feet ..	.0011895	do ..	....do	.do ..	.do ..	do ..	do ..	....do	....do	About 40 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	33.5 feet.	.0010340	.do ..	....do	do ..	.do ..	do ..	do ..	....do	....do	About 25 per cent. sand, fine and very fine; rest clay.	Do.
Do....	3.58 p. m..	Cory's base, half-way between center and east shore.	Surface	.0007513	2.98	....do	do ..	do .	.do ..	do ..	....do	....do	About 8 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	15 feet ..	.0008231	.do ..	....do	.do ..	.do ..	do ..	do ..	....do	....do	About 12 per cent. sand, fine and very fine, a very few grains $\frac{5}{1000}$ to $\frac{6}{1000}$ inch in diameter; rest clay.	Do.
Do....	....do	.....do	28 feet...	.0015911	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	Over one-half sand, fine and very fine; rest clay.	Do.

Mar. 30	1.30 p. m..	Cory's base, half-way between center and west shore.	Surface .	.0006404	2.58	....do	11.20	2.82	2.58	0.24	9.25 p. m..	10.00 a. m	A trace of sand, fine and very fine; rest clay.	4.329
Do....	....do	.....do	15 feet...	.0008231	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 8 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	28 feet...	.0015911	do ..	....do	do ..	do ..	do ..	do ..	... do	....do	About 40 per cent. sand, fine and very fine; rest clay.	Do.
Do....	1.42 p. m..	Cory's base, center of pass.	Surface .	.0004641	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	All clay.....	Do.
Do....	....do	.....do	8 feet....	.0017934	do ..	....do	do ..	do ..	do ..	do ..	...do	....do	About 30 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	16 feet...	.0008314	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About 10 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	24 feet...	.0010289	do ..	....do	do ..	do ..	do ..	do ..	....do	....do	About one-half sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	33 feet ..	.0011502	do ..	....do	do ..	do ..	do ..	do ..	...do	....do	Over 60 per cent. sand, fine and very fine; rest clay.	Do.
Do....	1.57 p. m..	Cory's base, half-way between center and east shore.	Surface .	.0004233	do ..	....do	do ..	do ..	do ..	do ..	...do	....do	All clay.....	Do.
Do....	....do	.....do	14.8 feet	.0006592	do ..	....do	do ..	do ..	do ..	do ..	...do	....do	About 8 per cent. sand, fine and very fine; rest clay.	Do.
Do....	....do	.....do	27.6 feet	.0014258	do ..	....do	do ..	do ..	do ..	do ..	....do	... do	About 60 per cent. sand, fine and very fine; rest clay.	Do.

REMARKS ON TABLES SHOWING ANALYSIS OF WATER SAMPLES FOR SEDIMENT.

Most of the time since February 9 samples of water have been taken from a certain well-established point in the deepest water between the shores, just above South Pass light-house, at the surface, 8, 16, 24, and 32 feet of depth in about 34½ feet of water, and at this same point, known by the intersection of ranges on shore, the velocity of the current has been ascertained by free floats passing over a path 200 in length, sunken to a depth which is one-half the mean depth of the entire cross-section at the time. This furnishes a standard by which the effect of the velocity on the amount of sediment upheld may be approximately measured.

Of course, observations at the exact locations of the samples when taken would be greatly preferable, but this work would be somewhat too extensive for my present force. I hope, however, to be soon able to extend this branch of work, so as to obtain samples and corresponding velocities daily.

Five velocity-floats are released and the mean result is accepted. Two other points are occupied, to obtain samples of water, one half way between the main station and each shore, and about a quart of water is taken from the surface, mid-depth, and close to the bottom at each of these stations.

The mean of the average of the results at each station as to ratio of sediment to water is taken as the mean result for the day. The mean ratio of sediment and of sand to water is ascertained, as is explained in the seventh report. The microscopic analysis, by which the maximum diameters of particles of sand are ascertained, is peculiarly interesting. Coarse sand is considered to require a maximum size of grains at least one-half of $\frac{1}{100}$ of an inch in its longest diameter. *Fine sand* is between this size and about $\frac{1}{1000}$ of an inch in diameter. While *very fine sand* contains no grains larger than 1 or 2 $\frac{1}{1000}$ of an inch in diameter.

Last spring and summer very coarse sand, over .01 inch in diameter, was frequently obtained in large proportions in the samples, but up to April 1 very little has been found. The only occasions when sand having grains .01 inch diameter has been obtained this year were on March 12 and 16, one sample respectively, and one sample April 20.

Often when sediment observations are taken, a bucket of water from near the bottom is taken up, and, after standing an hour or two, the water is mostly decanted off, and the bottom portion is filtered and dried, and then examined by me to ascertain the size of the largest grains, &c. Saturday, April 20, I found a considerable quantity of coarse sand, some as large as $\frac{2}{100}$ inch in its largest diameter. The tide read 3.06 at the time, 1.30 o'clock p. m. High water 3.27 at 10 a. m.; low water 1.45 at 11.15 p. m.; Carrollton gauge reading 9.20. The next Tuesday no coarse sand was obtained. The matter constituting the mud lumps has been repeatedly examined, under microscopes of high power, by skillful adepts, but all who have, to my knowledge, done so, have stated that it evidently consists of pure, or nearly pure, sand, of microscopic grains.

The microscope kindly loaned me by Captain Howell has an extreme magnifying power of about 200 diameters, and does not define objects clearly. So far as its revelations may be trusted, there is a great difference in the appearance of this so-called "mud-lump clay" and siliceous sand. The grains of the sand when only $\frac{1}{10000}$ of an inch in diameter seem tolerably distinct, each from the other, with shapes peculiar to the several grains, but the clay particles no larger are nearly uniform in

appearance, and cling to each other, presenting a segregated mass generally.

The subject was deemed of sufficient importance to warrant a quantitive and qualitative analysis. Specimens of clay from a mud lump just west of the end of the last wing-dam of the east jetty were obtained, dried, and examined by several methods. The results are quite nearly consonant, and the mean composition of the matter is as follows, all moisture having been expelled:

Silica	58.00	parts in 100 by weight.
Alumina	29.67	" " " " "
Lime and its salts	5.34	" " " " "
Magnesia and its salts	3.50	" " " " "
Iron and its salts	2.46	" " " " "
Common salt	1.00	" " " " "
	99.97	

This clay seems to contain considerably more gritty matter than the clay from mud lumps farther out in the Gulf, and it is proposed to continue the analysis by selecting for the purpose the various kinds of sediment obtained from various places.

The papers which are used to filter the dregs of the sample-jars, after they have stood quiet nearly a month, are found to be coated, generally, almost uniformly, over the inner surface, except at the very bottom of the conical papers, with a clayey substance which contains generally the same constituents, excepting salt, in about the same proportionate quantities, as the clay examined, while the conical lump always found at the bottom when the ratio of sediment to water is great, consists generally of two parts, a fine or very fine sand, nearest the bottom, and very fine sand and clay, mixed, in a thick coating on the base of the cone. If the sample contains coarse sand, it is nearly always found loose, just below the conical lump when this is taken up.

These facts greatly assist the approximate estimate of the proportions of the various constituents of the sediment in the papers, but I must here repeat that this estimate is only a rough approximation.

The maximum size of the grains of sand is well determined, however, by placing it under the microscope, on a glass grating graduated to $\frac{1}{1000}$ of an inch.

Many of the pipe-clays of Europe are said to contain less than 40 per cent. of alumina and almost 60 per cent. of silica, and it seems, therefore, no error to denominate the mud-lump matter "clay," that is silicate of alumina, together with free silica, as its principal constituents.

THE DREDGE-BOAT G. W. R. BAYLEY.

The new dredge, when not undergoing repairs or alterations, has been constantly employed either on the bar or in the pass between the bar and East Point, excepting when the weather has caused great roughness of the water.

From January 1 to April 15, the *Bayley* has worked 61½ days out of 105.

This boat remains substantially in the condition described in the eighth report. The suction apparatus has been simplified by discarding the complicated outer casing or shell, and it now consists simply of a pipe 27 inches in diameter which flares out at its end to a width of 4 feet, retaining nearly the same cross-section, and then, making a turn of 180 degrees, ends at the scraping edge, just below which were affixed

several small plows to break up the bottom, facilitating the entrance of sediment at the mouth above the cutting-edge.

These plows have lately been discarded. The hydraulic apparatus for closing the mouth is not needed and is not used. There is an adjustable aperture for the entrance of water in the curved rear surface, which is 3 inches wide when dredging in sand, and 9 inches working in mud.

April 29, 1878, fifteen samples from three trips of the *Bayley* were taken from the "raceway" at the end of the discharge conduit at such times as to obtain, as nearly as could be judged, average samples of the sediment-charged water.

The dredge was working in the shoalest water of the bar, in nearly pure sand. The aggregated samples were treated as the contents of the sample jars have been, and the result showed the *Bayley* was discharging sediment with the water in proportions of 9.01 to 100 parts by weight.

The specific gravity being taken at 1.89, the ratio by volume is 4.77 to 100, making the percentage of water to sediment-charged water 4.37. The three trips occupied one hour, when the water became too rough for work.

The boat works about 13 hours daily, accomplishing, therefore, about thirty-nine trips daily. The four tanks, holding together 512 cubic yards, were filled to overflowing each time. If the tanks had been simply filled, a day's work would be 872.43 cubic yards, but after the tanks were filled the pumps continued working, the sand settling to the bottom, and the nearly clear water running over the tops through the overflow-troughs to the sea. How much should be added for this overflow it is difficult to state, but it is judged that 50 per cent. is a liberal allowance according to the timing noted April 29. Making this allowance, the day's work was 1,308.64 cubic yards of the bottom removed. This is about the present capacity of the dredge for work on the bar itself. The conditions are very different when dredging in mud farther up the pass, and the results of work in this material will be noted in future reports. The pumping apparatus is now working more economically than ever before, and as the maximum effectiveness has been only lately attained, my tests have been deferred until the experimental stage might be presumed to have passed.

May 2, 1878, samples of the results of the *Bayley's* pumping while at work on the bar were taken from several trips. The several divisions of the work of the boat were timed, and it was found that on this occasion the pumping continued during a mean period about 68 per cent. of that occupied in filling the tanks, the latter process consuming on an average 7 minutes. A day's work corresponding to that portion noted would include 39 full trips, and the quantity of the bottom removed would amount to 1,474 cubic yards. It would seem that much more can be removed when working in sand than when pumping up mud and water.

THE ABSOLUTE AND RELATIVE DISCHARGE OF WATER AND SEDIMENT THROUGH SOUTH PASS IN 115 DAYS AND IN ONE YEAR.

The results of the calculation of the volume of discharge and cubic yards of sediment discharged through South Pass from March 26, 1877, to November 30, 1877, both inclusive, were announced in the eighth report.

To complete the estimate for one year, it is necessary to know the results for 115 days from December 1, 1877, to March 25, 1878, both inclusive.

The following are the results obtained in gauging South Pass at or near the times when the moon occupies an equatorial position, the tides being then absent or nearly imperceptible:

Date.	Discharge of South Pass in cubic feet per second at Falconer's base.	Discharge of South Pass in cubic feet per second at Cory's base.	Discharge of Grande Bayou in cubic feet per second.	Carrollton gauge.
February 6, 1878	50935.501	46176.570	.....	8.40
March 5, 1878	66373.84	.....	1892.2	10.10
April 15, 1878	52785.16	.....	2144.77	9.60

The mean reading of the Carrollton gauge for the 115 days in question was 7.83. The reading November 30 was 3.10, and February 6 8.40, a difference of 5.3 feet, corresponding to an increase of discharge amounting to 9649.5 cubic feet per second, or 182.1 feet for each increase of one-tenth of a foot in the river's height at Carrollton. The difference between the mean reading and that on the 6th of February, 1878, corresponds to a change of 1038.25 in the discharge of South Pass.

Diminishing the ascertained discharge, February 6, by this amount gives us for a mean discharge of South Pass during the 115 days 49,897.25 cubic feet per second.

The mean ratio by weight of sediment to water for the same period was, according to my data, .0007987.

Assuming the average specific gravity of the sediment to be 1.89, the ratio by volume was .000422592. From this there results a discharge of sediment, during the interval referred to, amounting to 7,759,726. Adding 15 per cent. as an estimated correction, including the sediment borne along on and very near the bottom, and also that strictly suspended sediment unaccounted for, because of the impracticability of obtaining samples at the bottom, as explained in the seventh report, page 22, and the total estimate for the sediment discharge of upper South Pass in 115 days becomes 8,923,784 cubic yards. The estimate for the previous 250 days was 18,660,174 cubic yards. For one year ending March 25, 1878, the aggregate estimated discharge of the main pass above Grande Bayou is 27,583,958 cubic yards. Of this amount, 23,446,365 cubic yards, in suspension, result from my observations for sediment discharge, and the remainder, 4,137,593 cubic yards, is an addition to account for sediment assumed to be carried along near the bottom, most of it not strictly in suspension.

About 3,000,000 cubic yards having been deposited in South Pass above the light-house since May, 1875, a proportionate amount for one year, about 1,000,000 cubic yards, must be added in extending these results to the whole river and to the other passes. In the 115 days from December 1 to March 25, inclusive, Grande Bayou discharged about 3 per cent. of the whole volume of South Pass, or about 267,000 cubic yards of sediment. For the previous 250 days its estimated sedimentary discharge is 1,707,223 cubic yards, and for the whole year 1,974,223 cubic yards. The estimated discharge of sediment between the jetties for the year in question is therefore 25,609,735, exclusive of the amount scoured out from between the jetties in excess of deposits between the wing-dams. Perhaps 10 per cent. of the whole sediment discharge escaped with the overflow before reaching the jetties' ends.

From data given in the eighth report, page 24, it will be seen that the mean of the two sets of results gives the discharge of South Pass above Grande Bayou, approximately, 10.10 per cent. of that of the whole Mississippi River, 22.46 per cent. of Southwest Pass, and 22.57 per cent. of that of Northeast Pass. Giving the relative proportions roundly, South Pass take about 10 per cent. of the whole discharge of the river, and each of the other passes about 45 per cent. The amount of sediment carried to the Gulf last year by the whole river was, therefore, about 285,000,000 cubic yards; by Northeast and Southwest Passes, each, about 128,250,000; and by South Pass, all told, about 28,500,000 cubic yards. The sediment here assigned to the discharge of the entire river would cover one square mile 276 feet deep.

When it is remembered that the amount of sediment deposited in South Pass in any one year out of the three included between the dates of two consecutive surveys is not closely determinable and that 1,000,000 cubic yards is merely taken roughly as one-third of the whole deposit in three years, and that to obtain the sediment in the entire river-discharge, we have worked with figures derived from observations in the smallest pass, discharging only about one-tenth of the whole amount, it seems remarkable that the result agrees so closely with Humphreys and Abbot, on page No. 148 of their revised report, where they give for the height of a prism having a base 1 mile square, containing the mean amount of sediment discharged annually, 268 feet, or only 8 feet less than my own deduction from an actual year's observations. All these deductions to the final result were made before examining Humphreys and Abbot's report to compare results. If the deposit in South Pass is neglected entirely, there obtains a similar prism about 266.3 feet high, as the equivalent of the aggregate amount of sediment discharged by the Mississippi River.

DEPRESSION AND COMPRESSION OF THE JETTIES.

In about three months and a half, from July 18, to October 31, 1877, the upper surface of the east jetty sank about 1.37 feet; of the west jetty about 1.09 feet, its offset, called Kipp Dam, sinking about 0.97 feet. In the five months and a half, from November 1 to April 15, the depression has been very much less. An exact and detailed set of levels for the whole of both jetties has been impracticable, because of high tides and rough water and the depression of a portion of the ends of the etties below the water surface. Enough data has been obtained, however, to furnish the mean reference of most of the upper mattresses to average flood tide, given on sheets Nos. 3 and 4 accompanying this report, and to enable me to make the above generalization as to the depression of the jetties; also to obtain approximately the mean amount of settling of the jetties.

In the east jetty it amounts to between four and five tenths of a foot, and for the rest of the South Pass works about five-tenths, in the five and one-half months.

THE LATEST HYDROGRAPHIC SURVEY OF SOUTH PASS.

In beginning the constantly-recurring work common to all the regular surveys, the channel at the head of the pass and the waters in its vicinity are first sounded, and are then generally plotted before beginning at the lower portion of the pass.

The channel below the light-house to a point near the ends of the jetties is then sounded, unless deep-sea soundings are to be included in the survey.

When all this work is charted in triplicate, the Gulf just beyond the ends of the jetties is sounded and afterwards plotted. By this time the text of the report and its tables are nearly completed, and if sufficiently advanced, the channel over the bar is surveyed. The charts present, therefore, when forwarded, the latest information as to the bar itself. In this case the dates of the surveys of the portion of South Pass near the light-house and of the bar itself are separated by days.

Changes have not been frequent or important, however, near the upper portion of the jetties, except at the deep-hole, and therefore the method pursued is the least objectionable of any practicable.

In comparing the present results with those last reported, the depths on the bar of December 15, 1877, are compared with those of May 1, 2, and 9, 1878, and the mean position of the 20, 30, and 40 feet curves on December 15, 1877, are compared with their mean places on the 1st and 2d of May, 1878.

The present available depth on the crest of the bar is 22.9 feet for a width of 120 feet. At last report it was 23.7 feet, and about 50 feet wide. The 22-feet channel was then 220 feet wide at its narrowest point; it is now 210 feet wide.

On pages 32 and 33 of the last report the comparative mean position of the portion of the 20 and 30 feet curves immediately in front of the jetties is given by rectangular ordinates having a given line of origin. The similar mean ordinate of this portion of the 20-feet curve is now 353 feet long, of the corresponding portion of the 30-feet curve it is 714 feet long.

This portion of the 20-feet curve has therefore advanced 92 feet, of the 30-feet curve it has receded 164 feet, and of the 40-feet curve the middle 1,050 feet has receded 211 feet.

Including these middle portions the mean positions of 3,350 feet of the 20, 30, and 40-feet curves at various dates were compared in the last or eighth report. The ordinates of the 30 and 40 feet curves, May 1 and 2, were respectively 597 and 1,285 feet, corresponding to a recession of 5 feet for the 30, and 183 feet for the 40 feet curve, since December 15, 1877. The ordinate of the 20-feet curve, May 9, was 242 feet, indicating an advance of 32 feet since December 15, 1877. Particular attention is called to the last monthly report, dated May 9, given below, for the latest information concerning the condition of the bar at South Pass and the channel through it to the Gulf. The latest data of May 9 for the shoal at the Head of the Pass are also given therein.

The general features of the hydrography at this shoal have changed so little since April 12 that it has not been deemed necessary to delay the report to copy the survey on the chart of the Head of the Pass forwarded herewith.

I desire to express publicly my appreciation of the faithfulness and efficiency of my assistants, Messrs. C. Donovan and O. D. Parmely, especially of the former, while in charge of the survey of the main body of the pass during my absence from Port Eads.

I subjoin here copies of statements forwarded to the following papers of New Orleans, January 2, February 4, March 4, April 4, and May 10, in pursuance of instructions from the honorable Secretary of War, that information of an exact character as to important facts regarding the depth of channel, &c., shall be published promptly after its ascertain-

ment. Statements were forwarded to the New Orleans Times, Picayune, Democrat, and Price Current:

PORT EADS, LA., *January* 2, 1878.

January 1, 1878, there was a channel 22.0 feet deep for a width of 200 feet at its narrowest point, at average flood tide, from the main Mississippi River through the jettied prolongation of South Pass to deeper water in the Gulf of Mexico.

At the head of South Pass the 22-foot channel was at least 264 feet wide.

A practicable channel 22.4 feet deep existed from the main river to the Gulf.

High tide of the day was nearly the same as average flood tide. At low tide these depths were lessened about 1.7 feet.

M. R. BROWN,
Captain of Engineers.

Official. Furnished by order of the honorable Secretary of War.

PORT EADS, SOUTH PASS, LA., *February* 4, 1878.

February 2 there was a channel 22 feet deep at average flood tide from the main Mississippi River through South Pass jetties to deeper water in the Gulf of Mexico. Its least width was 190 feet. A practicable channel at least 22.7 feet deep existed from the main river to the Gulf.

At high tide of the day these depths were lessened 0.4 foot and at low tide 1.9 feet.

I certify that the above is a correct statement taken from the results of my latest survey.

M. R. BROWN,
Captain of Engineers.

Official. Furnished by order of the honorable Secretary of War.

PORT EADS, *March* 4, 1878.

March 4 there was a practicable channel 22.7 feet deep over South Pass Bar from the main Mississippi River to the Gulf of Mexico at average flood tide.

The tide remained on a stand, giving a depth of just 22 feet throughout the day.

The 22-feet channel at average flood tide was at least 110 feet wide, lacking the full width of 200 feet for a length of 270 feet, so far as is known or within the limit of the survey, which covers all areas where a narrower channel is suspected.

I certify that the above is a correct statement taken from the results of my latest survey.

M. R. BROWN,
Captain of Engineers.

Official. Furnished by order of the honorable Secretary of War.

PORT EADS, *April* 3, 1878.

April 3 there was a channel 22 feet deep at average flood tide between the South Pass jetties to deeper water in the Gulf of Mexico. Its least width was 70 feet, lacking a width of 200 feet for a length of 150 feet.

A practicable channel with a least depth of 23 feet existed throughout the main pass, and between the jetties.

At high tide of the day these depths were increased 0.5 foot, and at low tide lessened 0.8 foot.

At the Head of the Passes a least depth of 21 feet at average flood tide was found March 18.

At the present stage of the river about 22.0 feet can be carried through the Head of the Passes at high tide.

M. R. BROWN,
Captain of Engineers.

Official. Furnished by order of the honorable Secretary of War.

PORT EADS, *May* 10, 1878.

May 9 at average flood tide there was a practicable channel between the South Pass jetties and over the bar near the sea ends 23.2 feet deep. The 22-feet channel was 210 feet wide. At high water of the day the depths were $\frac{3}{10}$ greater, and at low water $\frac{7}{10}$ less than at average flood tide. A channel 24 feet deep 250 feet in width might be obtained by the immediate removal of 6,000 cubic yards of the bottom provided that no deposition of sediment should be made simultaneously. Between a depth of 24 feet inside the bar and the same depth outside the distance is 180 feet.

The length of channel lacking a depth of 24 feet for a width of 250 feet is 1,650 feet, including the 180 feet referred to just above.

At the head of South Pass the same date at average flood tide there was a practicable channel 22.9 feet in depth. The 22-feet channel had a least width of over 260 feet. At high tide of the day these depths were increased about 1.7 feet. The reading for low water of the day is not known.

Rough water on the bar has prevented an earlier statement this month.

I certify that the above is a correct statement taken from the results of my latest survey.

M. R. BROWN,
Captain Engineers, U. S. A.

Official. Furnished by order of the honorable Secretary of War.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

HON. SECRETARY OF WAR.

[Telegram.]

PORT EADS, *December* 16, 1877.

HON. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.:

Yesterday, December 15, a channel 22 feet deep, throughout a width of more than 200 feet at the narrowest point, was obtained from deeper water in South Pass, near the Head of the Passes through the jettied prolongation of South Pass, to deeper water in the Gulf of Mexico.

M. R. BROWN,
Captain Engineers, U. S. A.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass La., December 17, 1877.

SIR: I have this day written to the honorable Secretary of War a letter, of which the following is a duplicate:

SIR: I have the honor, in compliance with the act of Congress, approved March 3, 1875, entitled "An act making appropriations for the repairs, preservation, and completion of certain public works on rivers and harbors, and for other purposes," to report in confirmation of my telegram of yesterday, that 'yesterday, December 15, a channel twenty-two feet deep, throughout a width of more than 200 feet at its narrowest point, was obtained from deeper water in South Pass, near the Head of the Passes, through the jettied prolongation of South Pass to deeper water in the Gulf of Mexico.'

I have also furnished Mr. Eads with a duplicate of this letter.

Not over one day's field work will be required to complete the pending survey, and after a few days' office work, following the taking of soundings in the gulf near the ends of the jetties, certified charts, with others, will be forwarded to the honorable Secretary of War, and to Mr. Eads, and at that time or soon after a report to accompany the charts will be mailed to both addresses.

I certify that the facts above stated, as to widths and depths of channel, are correct and in conformity with the results of my latest surveys.

HON. G. W. MCCRARY,
Secretary of War, Washington, D. C.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

MR. JAMES B. EADS.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., December 17, 1877.

SIR: I have the honor, in compliance with the act of Congress approved March 3, 1875, entitled "An act making appropriations for repairs, preservation, and completion of certain public works on rivers and harbors, and for other purposes," to report, in confirmation of my telegram of yesterday, that "yesterday, December 15, a channel 22 feet deep, throughout a width of more than 200 feet at its narrowest point, was obtained from deeper water in South Pass, near the Head of the Passes, through the jettied prolongation of South Pass to deeper water in the Gulf of Mexico."

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Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

Hon. GEORGE W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., January 2, 1878.

SIR: I have the honor to inclose herewith a copy of statement taken from the results of my latest survey of the crest of the bar and its immediate vicinity and at the head of South Pass.

The same is also furnished to the daily papers mentioned therein, and also to James B. Eads, according to your order.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

Hon. SECRETARY OF WAR,
Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., February 4, 1878.

SIR: I have the honor to transmit herewith a copy of statement taken from the results of my latest survey of the crest of the bar and its immediate vicinity.

The same is furnished to the daily papers mentioned therein, and also to James B. Eads, according to your order.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., March 4, 1878.

SIR: March 4, 1878, there was a practicable channel 22.7 feet deep over South Pass Bar, and from the main Mississippi River to the Gulf of Mexico, at average flood tide. The tide remained on a stand, giving a depth of just 22 feet throughout the day.

The 22-feet channel, at average flood-tide, was at least 110 feet wide, lacking the full width of 200 feet for a length of 270 feet, so far as is known, or within the limit of the survey, which covered all areas where a narrower channel is suspected.

I certify that the above is a correct statement taken from the results of my latest survey.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers, U. S. A.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., March 8, 1878.

SIR: Having finished a survey of about ten miles in the main body of South Pass, Mississippi River, I was about to make the regular periodical survey of the remainder, at the Head of Passes and between the jetties and near them, when I ascertained that Mr. Jas. B. Eads has made a contract with John Grant, who proposes to effect a deepening at the Head of Passes, and if successful to attempt the work of deepening the channel over the bar by means of the scour, induced through the anchoring or mooring of a peculiarly constructed boat having movable aprons, which are to be lowered to the bottom in order to make an obstruction to the normal current.

Under these circumstances, I have concluded to defer the proposed survey until the result of this effort is ascertained, as the partial success even of such endeavors would render an expensive series of charts inapplicable to the subsequent condition of the channel, and the boat used by Grant would be in the way of the launch in making a survey.

The channel between the jetties has in the main improved somewhat since the date of my last report, but the portion over the bar's crest has deteriorated sufficiently to reduce the minimum width of the 22-feet channel to 110 feet, as will be seen by the monthly statement for March lately sent you.

December 15 there were 4,400 feet (approximately) of the channel between the jetties, lacking a channel 250 feet wide, having a depth of 24 feet. This length has been diminished since by from 2,500 to 3,000 feet, probably, so that the length now lacking such a channel is considerably less than 2,000 feet.

The outer 20-feet curve has moved out about 120 feet, and the outer 30-feet curve has moved in about 280 feet. This tendency of these two curves to approach each other is invariably exhibited each season of high river. The customary fall in the river after the first rise, late in the winter or early in the spring, has not yet taken place, and it may not occur this year. The river is now nearly as high as when at its flood-stage last year, and the breaking up of the Missouri ice and the subsequent flood contributed by that river will, when it reaches this

place, establish the conditions which subject the channel to its crucial test as to permanence of width and depth on the crest of the bar.

I inclose an estimate of the cost of all the constructions and of all other expenses incurred in improving South Pass, by Eads & Co., up to January 1, 1878. The cost of plant itself is not included, but an allowance of 18 per cent. per year is made for interest on cost and deterioration.

Of course no account is made of interest or premiums paid for the use of money consumed in building jetties, &c. The estimate is of the presumed cost of such works, constructed under a system of cash payments, but the prices paid for labor and material are given as accurately as the actual prices could be ascertained from such sources of information as are available.

Wherever a doubt exists, the estimates are liberal.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., April 3, 1878.

SIR: I have the honor to transmit herewith a copy of statement taken from the results of my latest survey of the crest of the bar at South Pass and its immediate vicinity; also of the Head of Passes. The same is furnished to the daily papers mentioned therein, and also to James B. Eads, according to your order.

Very respectfully, your obedient servant,

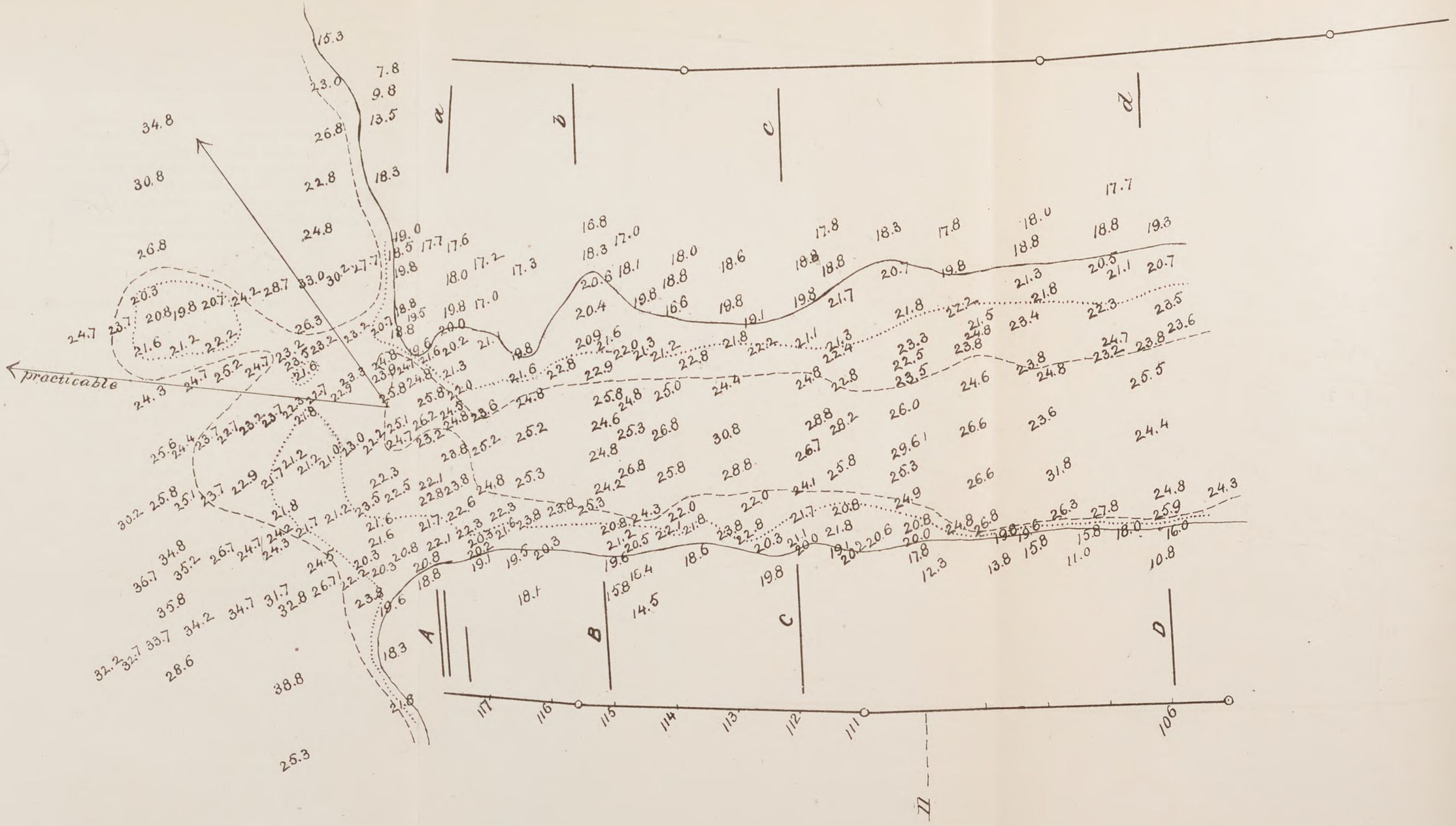
M. R. BROWN,
Captain of Engineers, U. S. A.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
Port Eads, South Pass, La., May 15, 1878.

SIR: I have to report that considerable changes have occurred on the bar, at and near the gulf ends of the jetties, since May 9, the date of my last monthly report, and of my telegraphic report to the Secretary of War.

Just before I commenced sounding yesterday afternoon, May 14, at 2 p. m., the English steamer Commander, drawing 21.5 feet aft, and somewhat less forward, grounded on the bar, in the position indicated in the accompanying sketch. Tide 0.8 feet below average flood stage. She had not followed the deepest channel. Her pilot told me he could not steer her so as to take advantage of the best line. The *Tapscott*, said to be drawing 22 feet, went out at 7½ a. m., May 14, without detention. The survey of May 14 indicates that between 22 feet inside and the same depth outside, there was a distance of 50 feet, and that over this shoal there was an available depth, varying from 21 feet to 21.9 feet, also that the 20-feet curve had moved out, since May 9, in one place 235 feet.



least width of 22 ~~by 250~~ ft. channel	150 ft.
Distance lacking 24 by 250 ft. "	1100 "
Practicable channel	21.5 "
Depth which can be carried through	23.2 "
no. of cu.yds. to be removed for practicable chan. 24×250 ft.	8300

" " " " " " " "

May 23d 1878

Scale 200 ft. = 1 in.

C. Donovan
Asst. Engr.

The *Commander* at this time, 2 p. m., May 15, is lying broadside to the stream. She took this position about 6.30 this morning. In consequence of the obstruction she presents to the current, abnormal shoaling in some places, and abnormal scouring in other localities, in her immediate vicinity, may be anticipated, and soundings for the present would be valueless.

Having just published my monthly report, the question arises as to my duty under the instructions of the honorable Secretary of War dated June 11, 1877, in such a contingency as has arisen.

If I publish monthly reports, as near the 1st of each month as is practicable, the public will doubtless learn to expect them at such times. If I publish reports at irregular intervals I may be blamed by some if each shoaling is not publicly reported, and by others if each deepening is not made known, and if the weather or other causes prevent me from making surveys frequently enough, the master of every vessel that grounds might seem to have cause for complaint against me. When changes as rapid as the last noted are occurring, the data furnished by the latest survey cannot be published before a state of affairs quite different occurs at the bar.

I have the honor to suggest that my instructions from the honorable Secretary of War, dated June 11, 1877, may be so modified as to require at all times the publication of a monthly statement of the important facts descriptive of the condition of the channel, and that, whenever the bar is subject to sudden changes, a statement shall be furnished to the public twice in each month, as nearly at regular intervals as is practicable. If evanescent changes are to be reported the telegraph should be used, and if daily reports are needed they should be based on actual surveys, thus adding greatly to the expense of the work; and the reports could only be furnished when daily surveys are practicable. Sometimes intervals of one or two weeks pass without an opportunity for a survey, on account of rough water on the bar. Again, should the channel at the Head of the Passes and at the mouth suffer sudden fluctuations, simultaneously, or should an accurate statement of the condition of the channel require more than a survey of the shoalest portion of the crest of the bar, it would be impracticable to furnish reports much oftener than once a fortnight, without great interference with the important routine work connected with the regular surveys.

I inclose a sketch showing the results of a careful survey of the crest of the bar made May 14, on which the position of the *Commander* is shown when she grounded.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain of Engineers.

Hon. GEO. W. MCCRARY,
Secretary of War, Washington, D. C.

UNITED STATES ENGINEER OFFICE,
No. 23 South RampartS treet,
New Orleans, La., May 25, 1878.

SIR: I inclose a sketch exhibiting the main results of a survey made by my orders on the 23d instant. It will be seen that the line of deepest water has a minimum sounding of 23.2 feet, and that the least depth

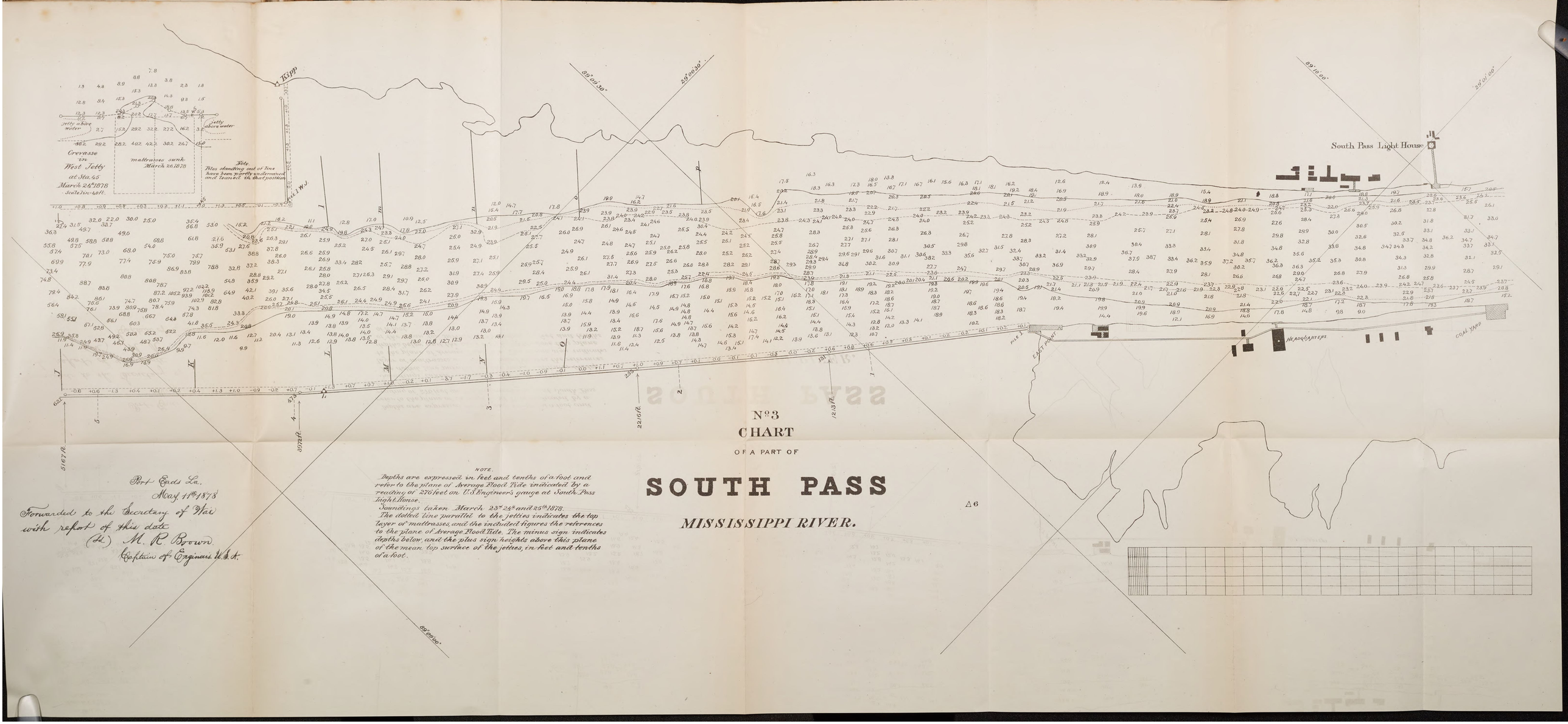
for a practicable channel was 21.5 feet. The least width of the 22-feet channel was 150 feet.

The steamer Persian, drawing 21 feet 8 inches of water aft and 19 feet 8 inches forward, grounded on the bar just at and beyond the jetties' ends at 7 p. m., May 23. At this time, 3.40 p. m. May 25, she is still aground. There seems to have been plenty of water in a straight channel when the Persian grounded.

Very respectfully, your obedient servant,

M. R. BROWN,
Captain Engineers, U. S. A.

Hon. G. W. McCRARY,
Secretary of War, Washington, D. C.



Nº3

CHART

OF A PART OF

SOUTH PASS

MISSISSIPPI RIVER.

△6

NOTE.

Depths are expressed in feet and tenths of a foot and refer to the plane of Average Flood Tide indicated by a reading of 2.26 feet on U.S. Engineer's gauge at South Pass Light House.

Soundings taken March 23rd 24th and 25th 1878.

The dotted line parallel to the jetties indicates the top layer of mattresses, and the included figures the references to the plane of Average Flood Tide. The minus sign indicates depths below, and the plus sign heights above this plane of the mean top surface of the jetties, in feet and tenths of a foot.

Port Eads La.
May 11th 1878

Forwarded to the Secretary of War with report of this date

(Sd.) M. R. Brown
Captain of Engineers U.S.A.

N°4

CHART

OF A PART OF

SOUTH PASS

MISSISSIPPI RIVER.

NOTE

Soundings from 1 to 102 taken March 26th and 27th 1878

102 to OLD'S JETTIES May 9. 1878

beyond end of jetties May 9th and 27th 1878.

CURVES

20ft. 22½ft. 24ft. 30ft. 40ft.

Port Eads La.
May 11th 1878

Forwarded to the Secretary of War
with report of this date.
M. R. Brown
Capt of Engrs U.S.A.

Scale of Feet

0 500 1000 2000 3000

N°5
CHART
OF
HEAD OF PASSES
MISSISSIPPI RIVER.

SURVEYED and PLOTTED
UNDER THE SUPERINTENDENCE
OF
Capt. M.R. BROWN Corps of Engrs.
U.S.A.

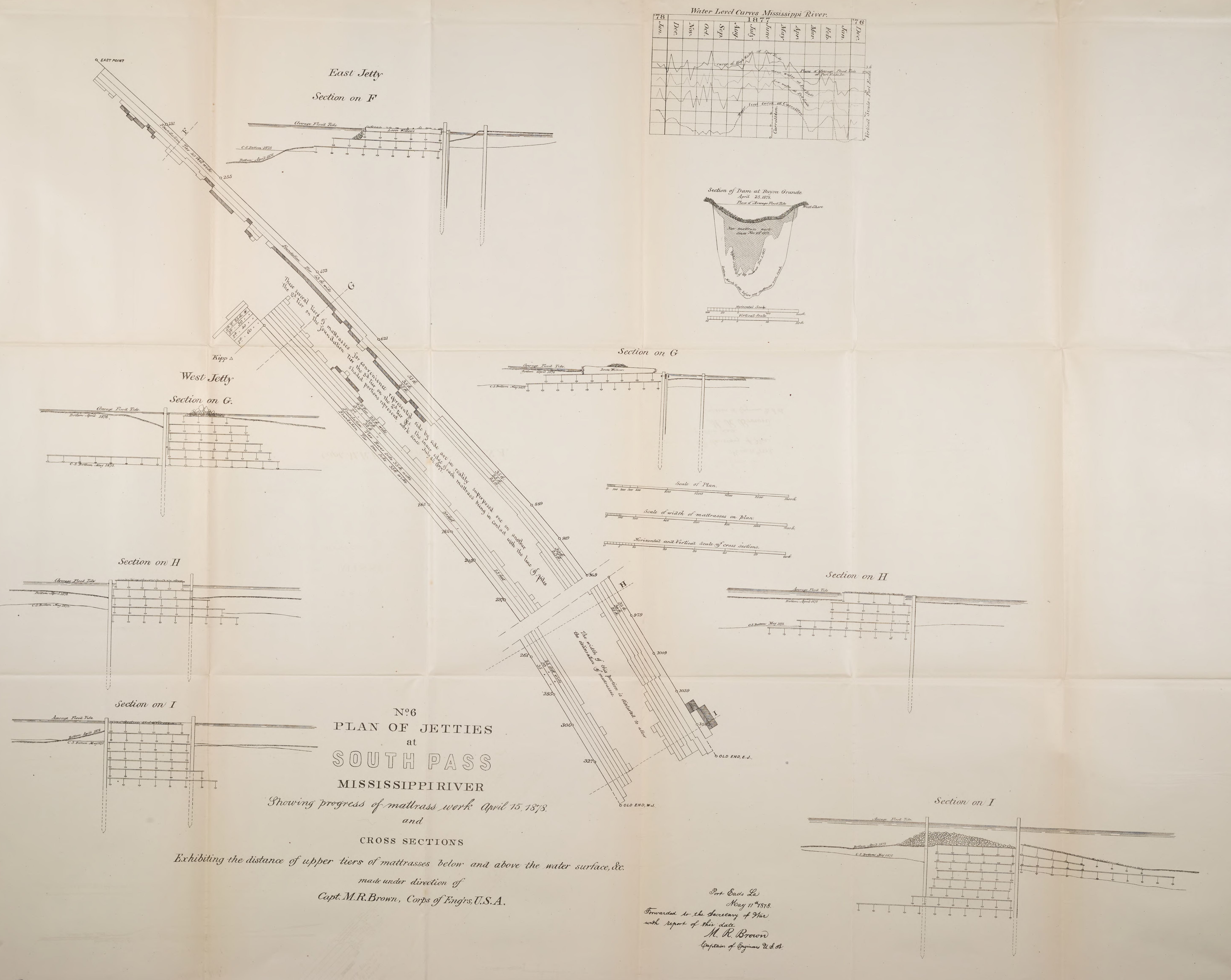
Scale of Feet.

NOTE
Depths are expressed in feet and refer to the plane of Average Head Tide indicated by a reading of 18 ft. on U.S. Engrs gauge at Head of Passes Light House.
Soundings in S.W. Pass taken March 20. 1878
" " N.E. " " " 22 "
" " South " " April 12 "

CONTOURS
20ft. 22ft. 26ft. 30ft.

Port Eads La.
May 11th 1878
Forwarded to the Secretary of War
with report of this date.
M. R. Brown
Captain of Engineers U.S.A.

S.W. PASS
N.E. PASS
SOUTH PASS
CLUSTER N°2
CLUSTER N°3
DAM N°1
DAM N°2
DAM N°3
DAM N°5
Shoal water.
Shoal water.
Shoal water.
SOUTH SHORE.
WEST SHORE.
Ht of PASSES LIGHT HOUSE.
Ht of ISLAND.
BURKE.
O'BRIEN.
TIDE GAUGE.
Layer of Mattresses 70 ft. wide and 2 ft. thick



No. 6
PLAN OF JETTIES
at
SOUTH PASS
MISSISSIPPI RIVER
Showing progress of mattrass work April 15, 1878.
and
CROSS SECTIONS
Exhibiting the distance of upper tiers of mattrasses below and above the water surface, &c.
made under direction of
Capt. M.R. Brown, Corps of Eng'rs, U.S.A.

Port Eads La
May 11th 1878.
Forwarded to the Secretary of War
with report of this date
M. R. Brown
Captain of Engineers U.S.A.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 96.

LETTER

FROM

THE SECRETARY OF WAR,

RECOMMENDING

The establishing a telegraph-line along the west branch of the Nueces River.

JUNE 12, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, June 8, 1878.

The Secretary of War has the honor to transmit to the United States Senate copy of a letter from the commanding general Department of Texas, dated the 23d ultimo, calling attention to the difficulty of acting under the authority to follow raiders across the Rio Grande River, and recommending, with a view to obviate delay in obtaining information of raids and discovering trails, the establishment of a telegraph-line along the west branch of the Nueces River.

The proposition of General Ord is approved by the General of the Army as well as by this department.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., May 23, 1878.

SIR: I wish to call the earnest attention of the Lieutenant-General to the great difficulty of acting under the authority to follow raiders across the Rio Grande.

From Eagle Pass to Laredo the country (over which I have passed) is mostly a dense chaparral of cactus, Spanish dagger, mesquite, and other similar plants, &c., the dense growth extending from 20 to 40 miles back from the river, and a more intricate and nearly as wide jungle fringes the banks for a long distance below Ringgold Barracks.

For over two hundred miles of this country, along the river between Roma and Eagle Pass, there is but one telegraph-station. From the Rio Grande River, toward the Nueces, the few inhabitants are Mexicans, from whom little information can be had. There are no inhabitants in this country to make the raiders afraid; there are no local means of finding the trails made by them, and the troops, when they get news of a raid—two or three days old—are thus forced to go from

their stations to the places whence cattle or horses may have been stolen, there take the trail and follow it (or its many branches where the party scatters) to the river. In the great majority of cases so much time is required to do this that the trail is old before the place of crossing is reached. As you are aware, we can cross only on fresh trails.

To obviate as far as practicable this delay, I have to request that an appropriation be asked for the erection of a new telegraph-line along the west branch of the Nueces River, the valley of which is one of the principal sources of supply for the raiders, and better peopled than the banks of the Rio Grande. The line should extend from near Uvalde to Fort Ewell, thence to the nearest cantonment of troops now in the vicinity of San Diego.

Telegraph-stations should be placed along the line, at intervals of about thirty miles, and guards stationed thereat, there to keep in communication with the ranches, and on notice received of a raid, to promptly take trails of raiders leading to the river, telegraphing back for troops, who might then get up in time to find the trail still fresh.

It may seem to one unacquainted with the great extent of this country, and its inhospitable character along the Rio Grande, that the river bank can be picketed; but, as there is for a large part of the year no grass for cavalry, and where there are no inhabitants to cut it, it would cost more than the whole sum now allowed to forage the troops in this department to buy and transport hay alone to the twenty or thirty detachments of cavalry it would require to watch the river from Fort Brown to San Félipe.

I am, sir, very respectfully, your obedient servant,

E. O. C. ORD,
Brigadier-General, Commanding.

The ADJUTANT-GENERAL,
Military Division of the Missouri, Chicago, Ill.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 97.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

COMMUNICATING,

In answer to a Senate resolution of April 16, 1878, *information in relation to balances alleged to be due from collectors of internal revenue.*

JUNE 13, 1878.—Referred to the Committee or Finance and ordered to be printed.

TREASURY DEPARTMENT, *June* 11, 1878.

SIR: I have the honor to acknowledge the receipt of Senate resolution of April 16, 1878, as follows:

Whereas, on the 18th day of February, 1871, the Secretary of the Treasury, in obedience to a resolution of the House of Representatives, adopted December 13, 1870, made a statement (Ex. Doc. 140, 3d sess. 41st Cong.), showing balances due from collectors of internal revenue, who were out of office on the 30th day of June, 1870, from which it appears there was due on that day from collectors not in office the sum of $20,700,983.33: Therefore, be it

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to report to the Senate what amount or portion of this sum has been since collected and paid into the Treasury; what amount, if any, has been settled by compromise, and the facts touching each compromise made, by whom recommended, and the amounts realized; what amount or portion of said sum of $20,700,983.33 remains unpaid, and if any balance is still due, what steps have been taken to enforce payment of the same; also, to report the amounts due by internal-revenue collectors on the 1st day of July, 1875, and how much, if any, of such amounts remains unpaid, and also the nature or classes of the items or indebtedness.

And to transmit herewith copy of a report in the matter, dated June 10, 1878, with accompanying statements, giving the information desired, from the First Comptroller of the Treasury, to whom the resolution had been referred.

Very respectfully,

JOHN SHERMAN,
Secretary.

Hon. WILLIAM A. WHEELER,
President of the Senate.

TREASURY DEPARTMENT,
OFFICE OF THE FIRST COMPTROLLER,
Washington, D. C., June 10, 1878.

SIR: I have the honor to acknowledge your reference to this office, under date of April 17, 1878, of Senate resolution of April 16, 1878, calling upon the Secretary of the Treasury to state what amount of the balance

of $20,700,983.33, shown to be due to the United States on the 30th day of June, 1870, from collectors of internal revenue who were out of office on that date, as per Executive Document 140, third session Forty-first Congress, has since been collected and paid into the Treasury, what amount has been settled by compromise, what amount remains unpaid, and what steps have been taken to enforce payment of the same; also, to report the amounts due from collectors of internal revenue on the 1st day of July, 1875, and how much, if any, of said amounts remains unpaid, and also the nature or classes of the items of indebtedness.

The information called for is embodied in two reports, which have been prepared in this office, and which I have the honor to transmit herewith.

The "errors," "erroneous charges," "duplicate charges," &c., reported in the column of "miscellaneous items of credit" and explained in the column of remarks, are generally those of collectors and assessors, growing out of the preparation of tax-lists, which become the basis of the collector's receipt, known to the department as "Form 23½," and with which the collector is charged by the accounting-officers. If subsequently it is discovered that the lists were not correctly footed, or contained items of tax in duplicate, the amount of the "error" or "duplicate charge" is carried to the collector's credit or debit, as the case may be. The errors and extraordinary credits generally, not otherwise explained, embraced in the column of "miscellaneous items of credit," are in the main the result of doubt as to the facts in the assessment and collection of taxes by the revenue officers, who, in such cases, very justly give the United States the benefit of such doubt, as where an incoming collector is charged with all the taxes with which the outgoing collector stands debited, and hence with which the latter is credited; subsequently an abatement claim in favor of the outgoing collector, which was at the time pending, is allowed, and in order that he may be credited with the same, he must be charged with a like sum, with which the incoming collector must be credited by an "erroneous charge." This class of credits, under the general term "erroneous," embraces a considerable part of the "miscellaneous items" given in the accompanying report.

Referring to the "balances after deducting unadjusted credits," shown in these reports, it is proper to state they are in some instances subject to still further reductions by the allowance of pending claims for the abatement of uncollectible taxes.

Very respectfully, your obedient servant,

A. G. PORTER,
Comptroller.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

STATEMENT OF BALANCES DUE FROM COLLECTORS OF INTERNAL REVENUE, MADE IN PURSUANCE OF SENATE RESOLUTION, DATED APRIL 16, 1878, AS FOLLOWS:

"Whereas on the 18th day of February, 1871, the Secretary of the Treasury, in obedience to a resolution of the House of Representatives, adopted December 13, 1870, made a statement (Ex. Doc. 140, 3d session 41st Congress), showing balances due from collectors of internal revenue who were out of office on the 30th day of June, 1870, from which it appears there was due on that day from collectors not in office the sum of $20,700,983.33: Therefore, *Be it resolved*, That the Secretary of the Treasury be, and he is hereby, directed to report to the Senate what amount or portion of this sum has been since collected and paid into the Treasury; what amount, if any, has been settled by compromise, and the facts touching each compromise made, by whom recommended, and the amounts realized; what amount or portion of said sum of $20,700,983.33 remains unpaid, and, if any balance is still due, what steps have been taken to enforce payment of the same."

State	District	Collector	Revenue balance against the collector on the 30th day of June, 1870	Outstanding balance against the collector on the 31st day of May, 1878	Outstanding balance, nature of: Cash	Outstanding balance, nature of: Taxes	Steps taken to enforce payment	Unadjusted credits	Balance against the collector after deducting unadjusted credits
Alabama	1	T. C. A. Dexter, acting	$5,766 84	$5,766 84	$5,766 84		See remarks[1]		
	1	M. S. Foote	11,206 42	694 06	694 06		Suit instituted[2]		
	2	James Berney	31,186 61	31,186 61	21,529 94	$9,656 67	Suit instituted[3]	$15,620 38	$15,566 23
	3	John T. Tanner	188,375 49						
	3	Robert Johnston	45,556 27	52,101 61	44,991 24	7,110 37	Suit pending		
Arkansas	1	Edwin R. McGuire	221,016 20						
	1	William J. Patton	438 06						
	1	Logan H. Roots	8,428 88						
	1	A. G. Ryan	1,995 04						
	1	H. D. Halsey, acting	6,231 67						
	3	Samuel F. Cooper	1,878 34						
California	1	W. Y. Patch	5,396 40						
	1	Frank Soulé	737,098 18	18,373 36	18,373 36		Suit instituted[11]		
	1	J. O. Rawlins	216,113 13	30,881 18	30,881 18		Suit pending		
	2	James H. Morgan	5,567 94	5,121 54	5,121 54		Suit instituted[3]		
	2	T. T. Tidball	33,259 43						
	2	W. N. Slocum	6,722 24	4,257 62	4,257 62		Suit instituted[3]		
	4	A. A. DeLong	5,884 10						
	5	Charles Maltby	2,192 11						
Connecticut	1	Mark Howard	2,486 54	10	10		None		
Delaware		C. H. B. Day	88,796 29						
Florida	1	M. A. Williams	18,675 84	3,841 18	3,386 50	453 68	Suit pending	96 00	3,745 18
Georgia	1	A. N. Wilson	10,756 78						
	2	James C. McBurney	9,761 61						
	3	W. D. Bard	94,340 45						
Illinois	1	John M. Corse	852 56	852 56		852 56	See remarks[19]	852 56	
	3	H. A. Mix	20,402 40						
	3	Frederick Sackett	1,969 99						
	4	Jackson Grimshaw	1,626 31						
	5	J. H. Bryant, 1st term	434,715 22						
	5	J. H. Bryant, 2d term	9 00						
	5	H. R. Sanderson	14,539 83						
	6	Abel Longworth	4,668 92						
	7	William T. Cunningham	41,719 28						
	8	D. T. Littler	527,373 93						
	8	E. S. McCook	684,903 92						
	9	William G. Green	3,853 96						
	9	M. B. Harrison	2,808 55						
	9	Silas Cheek	11,042 75						
	9	D. H. Wilson	483 31						
	9	L. F. Ross	80,059 54						
	9	Samuel McCreery	393 06						
	12	Willard C. Flagg	23,726 18						
	13	D. G. Hay	9,236 02						
Indiana	1	Andrew Lewis	51,533 52	13,804 93	12,933 68	871 25	Suit instituted[30]		
	2	Henry Crawford	12,840 87						
	3	J. S. S. Hunter	2,158 99						
	3	Smith Jones	20 08						
	4	J. L. Yater	33,928 08	23,928 08	23,928 08		See remarks[32]		
	5	Samuel W. Harlan	3,928 15						
	7	R. W. Thompson	5,879 24						
	7	J. J. Alexander	55,412 63						
	9	J. F. Dodds	14,210 51						
	10	W. H. Withers	14,282 03						
	11	DeWitt C. Chipman	19,384 06						
	11	J. R. Slack	1,189 97						
Iowa	2	James Armstrong	13,336 03						
	3	Levi Fuller	[38]2,972 85						
	3	D. B. Henderson	10,116 13						
	4	Sandford Harned							
	5	William H. Merritt							
	5	Horace Everett	34,886 26						
	6	S. B. Hewett	17,449 62						
	6	Albert Head	634 09						
	6	William C. Stanbery	1,986 36	1,195 18	1,195 18		Suit instituted[42]		
Kansas	1	John Speer	161,297 37						
	1	Thomas Moonlight	37,132 75						
Kentucky	1	George D. Blakey	13,956 32						
	1	John D. Kelly	155,554 64	9,631 00	9,631 00		Suit instituted[45]	6,786 26	2,844 74
	2	Willard Davis	193,998 08						
	2	James A. Wallace							
	2	George D. Blakey	77,896 18						
	3	George D. Blakey	99,976 03						
	3	Philip Speed	127,825 58						
	4	Richard Apperson	5,051 03						
	5	Willard Davis	74,980 32						
	5	Philip Speed	79,628 70						
	6	J. J. Hudnall	96,889 21						
	7	Willard Davis	77,881 12						
	9	J. M. Duke	5 93						
	9	F. C. Barnes	343,598 44	102,277 82	80,137 19	22,140 63	Suit instituted[52]		
Louisiana	1	George S. Denison	126,963 71	4,346 84	4,346 84		Suit pending		
	1	W. R. Whitaker	72,306 95	11,182 06	11,182 06		Suit pending		
	1	Charles Smith	84,334 26	66,215 67	44,702 60	21,513 07	Suit instituted[55]		
	1	William P. Benton	31,453 65	18,540 25	18,540 25		Suit pending		
	1	James B. Steedman	614,754 95	359,104 01	203,622 00	155,482 01	Suit pending		
	2	Alfred Duperier	82,915 14	23,305 15	10,080 91	13,224 24	Suit pending		
	2	E. M. Bouligny	[57]159,655 62	89,626 92	49,151 09	40,475 83	Suit instituted[58]		
	2	Henry Bausher	([59])						
	3	Lewis B. Collins	651,547 21	673,861 79	672,613 63	1,248 16	Suit instituted[61]		
	3	Eugene Tisdale	178,997 29	156,907 76	154,554 06	2,353 70	Suit instituted[62]		
Maine	1	Nathaniel J. Miller	401 97						
	2	Jesse S. Lyford	3,763 31						
Maryland	1	James T. McCullough	108,818 82						
	1	W. J. Brittingham	2,547 41						
	2	J. L. Ridgely, 1st term	624 94						
	2	J. L. Ridgely, 2d term	7,114 86						
	3	P. G. Sauerwein	39,077 52						
	3	W. A. Wisong	122,281 44						
	4	Frederick Schley	15,096 60						
	5	A. P. Gorman	14,511 67						
	5	George W. Dawson	104,687 23	2,115 25	2,115 25		See unadjusted credit	2,115 25	
	5	George W. Sands		5,468 16	5,468 16		Suit pending		
Massachusetts	3	W. H. McCartney	83,266 50	12,234 58	4,795 99	7,438 59	Suit pending		
	5	J. Vincent Browne	5,460 76	3,868 30	3,868 30		See remarks[73]		
	7	John Nesmith	5,731 64	2,074 49	2,074 49		See remarks[73]		
	8	Adin Thayer	2,926 92						
	9	D. W. Alvord	6,542 60						
Michigan	1	D. E. Harbaugh	265,788 87						
	2	F. W. Curtenius	14,037 20						
	2	W. G. Beckwith							
	5	Dexter Mussey	56,357 41						
	5	Benjamin C. Gunn	4,664 79						
	6	George W. Fish	47,069 49						
	6	W. B. McCreerey							
Minnesota	1	J. N. Hall	20,103 23						
	1	Daniel Cameron	7,222 61						
	1	William R. Merrick (acting)	97 28						
	2	Thomas G. Jones	13,478 70						
	2	A. C. Morrill	22,510 36						
Mississippi	1	E. G. Cook	52,925 14						
	2	F. S. Hunt	161,187 71	139,463 15	62,533 14	76,930 01	Suit pending		
	2	Martin Keary	51,768 74	9,285 50	2,056 06	7,229 44	Suit instituted[83]		
	3	B. H. Sheppard	71,801 22	70,650 77		70,650 77	Suit instituted[84]	7,297 65	63,353 12
	3	W. W. Willis	68,039 84						
	3	W. C. V. Hicks	12,913 50	4,909 59		4,909 59	Suit instituted[86]		
Missouri	1	Barton Able	257,246 27						
	2	E. W. Murphy	30,557 17	15,451 34	14,546 80	904 54	Suit pending	4,000 00	11,451 34
	2	J. B. Maupin	35,543 52						
	2	William M. Hamilton	5,065 76						
	2	Bernard Zwart							
	3	J. M. Glover	4,123 92						
	3	J. M. Cashman	51,917 10						
	4	A. H. Martin	97,696 00						
	5	James A. McCullah	8,398 52						
	5	T. T. Crittenden	5,435 07						
	5	J. Montgomery (acting)	10,578 06						
	5	W. J. Chandler	35,913 88						
	6	James Craig	235,788 63						
New Jersey	1	W. S. Sharpe	25,927 45						
	2	Stephen B. Smith	88 30						
	4	Eugene Ayres	23,400 16						
	5	D. M. Wilson	6,999 34						
New York	2	A. M. Wood	441,404 60						
	3	Calvin E. Pratt	116,440 39						
	3	T. C. Callicott	83,924 62						
	3	H. C. McLaughlin, acting	73,616 85						
	3	E. T. Wood	[101]243,752 43						
	4	J. F. Bailey	603,951 00	602,134 27	91,358 24	510,776 03	Compromised	436,611 98	165,522 49
	7	M. B. Blake, 1st term	2,113 04						
	8	George P. Putnam	1,834 34	2,190 93	2,190 93		Suit requested		
	8	Morgan L. Harris	3,408 31						
	8	Alexander Spaulding	438,455 39	636 85	636 85		Suit pending		
	8	J. V. Gridley	63,412 92						
	9	Thomas O'Callaghan	44,336 23						
	10	Abram Hyatt	3,799 95						
	11	John G. Wilkin	25,211 94						
	12	J. F. Waterman	5,491 93						
	12	P. E. Van Alstyne	101,059 49						
	13	William Masten	91,508 88						
	19	George W. Ernst	1,750 66						
	20	Lawrence L. Merry	6,811 22						
	21	Thomas R. Walker	122,061 67						
	21	Henry H. Fish	1,314 35						
	23	Alfred Wilkinson	1,756 16						
	23	Silas F. Smith	1,827 55						
	25	Myron H. Clarke	4,260 87						
	25	David H. Abell	1,069 82	234 73		234 73	Suit instituted[112]		
	26	Simon C. Hitchcock	3,032 25						
	27	O. J. Averill	1,237 64						
	28	J. Van Voorhis, jr.	2,020 48						
	28	Samuel T. Allen	127,067 49						
	29	J. B. Halsted	18,933 98	18,933 98	18,933 98		See remarks[115]	18,933 98	
	29	H. W. Hascall	9,925 94						
	30	Adrian R. Root	23,009 88						
	31	Milton Smith	9,870 65						
	31	Charles S. Cary	845 56						
	31	Charles Kennedy	25 27						
	32	Sheridan Shook	535,251 32						
	32	J. F. Bailey	586,102 46	126,757 55	126,757 55		Compromised	88,075 85	38,681 70
Nevada		J. S. Dilley	54,599 88	37,774 97	37,774 97		Suit instituted[117]		
North Carolina	1	William E. Bond	5,054 16						
	1	W. C. Loftin (acting)	1,621 36	1,621 36		[118]1,621 36	See remarks[119]		
	2	L. G. Estes	75,829 15	1,643 37	1,643 37		Suit instituted[121]		
	3	C. W. Woollen	56,813 62	39,209 96	8,010 60	31,199 36	Stated for suit	18,695 43	20,514 53
	4	John Read	58,412 04	11,054 35	55 91	10,998 44	See remarks[123]	10,431 18	623 17
	5	W. H. Thompson	50,430 77	12,710 57	8,590 33	4,120 24	Suit pending	4,505 00	8,205 57
	5	John Crane	174,661 16	137,344 16	44,732 19	92,611 97	Suit pending		
	7	John B. Weaver	57,483 49						
Ohio	1	Thomas Spooner	13,550 07						
	2	R. M. W. Tayler	3,924 59						
	2	S. J. McGroarty	55,394 97						
	3	J. L. Martin	11,614 09						
	3	Ferd. Van Derveer	139,705 82						
	4	Frank W. Wright	58,336 93						
	4	J. W. Frizell	36,922 64						
	5	C. B. Wilson	104,452 58						
	6	David Sanders	7,792 76						
	6	W. O. Collins	81,555 34						
	7	A. P. Stone	107,750 40						
	7	B. F. Martin	2 19						
	8	James H. Anderson							
	10	S. A. Raymond	21,926 86						
	12	Nathan Denny	9,334 72						
	13	John A. Hunter	66,228 19						
	15	W. P. Richardson	1,706 97	3,196 03	3,196 03		Suit pending	1,508 00	1,688 03
	16	Charles J. Albright	17,219 29						
	17	Lyman W. Potter	6,585 68						
	18	Thomas Jones, jr.	637,745 26						
Oregon		L. W. Coe	1,026 12	1,026 12	1,026 12		See remarks[133]		
Pennsylvania	1	Mederem Crawford	57 58						
	1	J. Barclay Harding	3,394 67						
	1	Charles Abel	66,721 44						
	1	William H. Barnes	[134]309,716 44						
	2	John H. Diehl	148,364 76	20,015 43	13,997 72	6,017 71	Suit instituted[136]		
	3	William J. Wainwright	72,849 78						
	3	Samuel M. Zulick	82,644 32	224,207 18	3,774 69	220,432 49	Suit instituted[139]		
	4	John M. Riley	141,935 49	141,935 49	141,935 49		Suit pending		
	4	Benjamin H. Brown	819 95						
	4	Alexander Cummings	260,361 61						
	4	John Hancock		9,882 50		9,882 50	Suit instituted[141]		
	5	John W. Cowell	33,192 01						
	5	A. S. Cadwallader	6,919 43						
	5	Joseph Barnsley	5,827 78						
	7	William M. Swayne	81 78						
	8	Diller Luther	63,330 64						
	8	Alexander H. Hood	130,099 91						
	9	William M. Wiley							
	11	Edgar T. Foster	5,118 30						
	13	H. L. Scott	34,954 35						
	14	Charles H. Shriner	30,098 82						
	16	R. C. Swope							
	18	J. R. Campbell							
	18	Henry A. Guernsey	15,739 91						
	19	John W. Douglass	1,048 71	916 99	916 99		Act pending for relief		
	20	W. F. Clark	35,141 27						
	20	Peter McGough	201,317 90						
	23	Robert L. Brown							
	24	David Sankey	32,934 44						
	24	A. Robertson	148,304 66						
Rhode Island	1	L. B. Frieze	125,775 54						
South Carolina	1	Samuel Mayrant	40,214 60						
	1	E. Hudson Smith	248 29						
	2	F. A. Sawyer	35,920 91	20,124 17	418 80	19,705 37	Suit pending		
Tennessee	1	Reuel Hough	207,022 47	17,761 80	17,761 80		Suit instituted[152]	1,760 00	16,001 80
	1	Elijah Simerly	36,174 39						
	2	Henry L. Norvell	312,244 97	42,528 79	529 71	41,999 08	Suit pending		
	2	James T. Abernathy	34,374 37						
	2	J. M. Denning (acting)	5,523 33						
	4	Joseph Ramsey	80,352 39	3,425 95	3,425 95		Stated for suit		
	6	Thomas W. Keezee	72,711 51						
	6	William C. Webb	76,056 77	420 49	263 24	157 25	Suit pending		
	7	Horace T. Blanton	30,591 41						
	8	Rolfe S. Saunders	182,671 66	105,606 64	38,599 25	67,007 39	Stated for suit	53,838 21	51,768 43
Texas	1	Milton Stapp	51,339 10	565 52	522 96	42 56	Suit pending		
	2	Robert B. Kingsbury	241,449 52	14,597 76		14,597 76	Suit requested		
	2	R. H. Lane	257,763 76	28,926 86	11,612 63	17,314 23	Suit pending		
	3	R. N. Lane	59,087 57	34,384 03	10,000 00	24,384 03	Suit pending	34,384 03	
	4	L. D. Evans	87,288 98						
	4	Davis B. Bonfoey	127,753 49	62,934 70	55,778 88	7,155 82	Suit pending	13,761 82	49,172 88
Vermont	1	Joseph Poland	1,305 33						
	2	George A. Merrill	3,873 29						
	3	Carlos Baxter	7,808 26						
Virginia	1	William James	51,088 11						
	1	George C. Tyler	2,735 57						
	2	Samuel R. Sterling	75,721 13						
	2	Simon Stone	274,848 87						
	2	William Selden	702 21						
	3	James P. Prince	48,442 94	11,115 20	5,617 52	5,497 68	Suit instituted[166]		
	3	N. D. Keneaster	16,813 85	17,168 75	15,537 80	1,630 95	Suit pending		
	3	John E. Mulford	14,265 01						
	3	William James							
	4	John H. Anderson	48,807 17	34,633 92		34,633 92	Suit instituted[167]		
	4	William E. Wells	52,277 24	42,848 25	3,062 04	39,786 21	Suit instituted[168]		
	4	Otis H. Russell	12,218 79						
	5	E. Boyd Pendleton	233,130 82						
	6	Samuel R. Sterling	130,790 14						
	7	Thomas L. Sanborn	26,464 40	362 25	362 25		Stated for suit		
	8	George W. Jackson	46,594 97	15,033 08		15,033 08	Suit pending		
West Virginia	1	James C. Orr	22,248 60	8,801 01	6,920 55	1,880 46	Suit pending		
	2	Andrew S. Core	59,104 89						
	2	James V. Boughner	12,711 88						
	2	Samuel R. Dawson	24,173 38						
	2	Le Roy Cofran	5,754 05						
	3	Samuel R. Dawson	37,084 55						
	3	A. W. Mann							
Wisconsin	4	Joseph H. Babcock	4,061 50						
	4	Ephraim Williams	1,399 53						
	5	Horace Merriam	9,433 88						
	5	William Johnson	38,375 68						
	6	William T. Price	12,012 50						
	6	Charles Shuter	48,804 57						
Dakota		William Shriner	11,356 87						
Idaho		John Cummins	241 05	241 05	241 05		See remarks[178]		
Montana		N. P. Langford	9,870 54						
		A. J. Simmons	4,970 41						
Nebraska		James Sweet	3,300 27						
New Mexico		Charles Blumner	78,159 44	8,375 15	7,508 72	866 43	Stated for suit		
		A. P. Sullivan	21,614 94						
Washington		P. D. Moore							
Utah		Robert T. Burton	57,484 14						

RECAPITULATION.

Amount of cash collected and paid into the Treasury since June 30, 1870	$9,129,087 80
Amount released by compromise	702,123 22
Amount realized by compromise	336,412 81
Amount of outstanding balance against collectors on the 31st day of May, 1878	3,835,807 01
Amount of unadjusted credits	719,273 58
Amount of balance remaining against collectors after deducting unadjusted credits	3,116,533 43

1 Supervising special agent of the Treasury Department, acting collector from June to September, 1865, claims the amount of outstanding balance as commissions; undetermined.
2 Judgment in favor of the United States for $891.46; execution issued July 25, 1876, and returned "No property found"; alias execution ordered and issued, returned June 4, 1877, "No property found."
3 Judgment in favor of defendants.
4 Erroneous charges, $37,987.23; tax on real estate bid in by the United States, $100.22.
5 Tax on land bid in by the United States, $90; error in footing annual list, 1869, $25.
6 Erroneous charges, $120,424.04; released by compromise, $62,358.09.
7 Released by act of Congress approved March 2, 1875.
8 Released by act of Congress approved March 3, 1871.
9 Error in charging in excess spirit-stamps received from predecessor.
10 Duplicate charges, $4,468.50; commissions not heretofore credited, $11.42.
11 Judgment for $11,744.23 in favor of the United States carried to Supreme Court on writ of error.
12 Amount of additional compensation due to the collector, carried to the credit of his revenue account.
13 Additional compensation by (private) act of March 3, 1871, $4,791.60; stationery, $88.99.
14 Payments to assistant assessors, expenses of depositing money, and commissions allowed collector.
15 Commissions allowed under decision of the United States circuit court.
16 Penalties twice charged; the balance in this case was reduced to $4,652.70; the sum of $6,849.18 was accepted in compromise of this and another case in suit on account of direct taxes; credit was given for the full amount of the revenue balance, $4,652.70, closing this account, and the remainder was applied to the direct-tax account.
17 Erroneous charges—excesses.
18 Taxes twice receipted for, $1,112; error in footing lists, $30.
19 This balance is the value of one spirit-stamp book returned to the department by the collector and supposed to have been lost or destroyed.
20 Released by compromise.
21 Counter-warrant, $1,135.46; suspended vouchers allowed, $42.09.
22 Cash destroyed by fire, $6,000; error in footing (July, 1866) list, $1,839.45.
23 Amount charged in excess, $19,762.66; suspended vouchers allowed, $60.92.
24 Counter-warrant.
25 Errors in charging as taxes received from predecessor.
26 Special allowance, $793.62; tax withheld from salaries, $4.53.
27 Amount allowed by the court.
28 Additional commissions, 1874, $213.33; error in footing lists, $86.27; voucher not heretofore presented, $412.91; suspended vouchers allowed, $21.10.
29 Suspended vouchers allowed.
30 Judgment in favor of the United States for $10,868.49 and interest; in hands of United States marshal for collection.
31 Drafts in favor of assessor, $548.75; amount of suspended vouchers allowed, $134.59.
32 This case was compromised upon payment of $10,000, but the account still stands open on the books of the Comptroller's Office.
33 Error in footing lists, $19; released by compromise, $12,461.70; error in charging as additional taxes, $1.66.
34 Erroneous charges.
35 Suspended vouchers allowed, $32.39; erroneous charge, $734.77.
36 Error in footing annual list, $30; erroneously charged as taxes twice abated, $22.27; suspended vouchers allowed, $3.
37 Charges in excess as taxes and collections on successor's lists.
38 Balance erroneously reported in "statement" to June 30, 1870, as $29,072.85.
39 Charged in excess as collections on predecessor's lists, $897.02; duplicate charges, $6,548.50.
40 Suspended vouchers allowed, $226.68; commissions on deposits, $531.05.
41 Suspended vouchers allowed, $79.18; error in charging excess of abatements, $25.34.
42 Judgment for $1,195.18 in favor of the United States; motion for a new trial, continued to April term, 1878.
43 Error in charging annual list, 1864.
44 Errors in former accounts, $3,946.97; duplicate charges, $5,126.24.
45 Judgment in favor of the United States for $9,780.27; paid $6,786.26.
46 Additional allowance by Secretary, $10,938.23; suspended vouchers allowed, $144.40.
47 Errors in former reports, $30,568.27; special allowance by Secretary, $3,504.67; taxes refunded, $20; suspended vouchers allowed, $87.02; expenses of depositing money, $415.17.
48 Charged in excess as collected on bonded goods, $18,785.15; improperly charged as United States moiety, $673.11; suspended vouchers allowed, $10.56.
49 Allowed by act of Congress, $14,338.33; Errors in former reports, $29,961.53; suspended vouchers allowed, $40.02.
50 Errors in former reports, $195.02; special deposits erroneously receipted for on lists, $141.33.
51 Amount of tax-lists receipted for twice, $147,493.
52 Judgment in favor of the United States for $200,000, $100,000 against sureties, $100,000 against principal; executions issued in both cases, returned "nulla bona."
53 Stationery, $284.60; suspended vouchers allowed, $732.60; additional commissions, $749.25.
54 Additional compensation, special allowance, $5,564.62; suspended vouchers allowed, $253.71.
55 Judgment in favor of the United States for $84,334.26; execution issued, returned "nulla bona."
56 Amount of error in charging as collections on others' lists.
57 Balance to June 30, 1870, erroneously reported as $159,665.62.
57a Error in charging 1867 list.
58 Judgment in favor of the United States for $75,000; execution issued, returned "No property found."
59 Balance to June 30, 1870, erroneously reported as $2,087.02; nothing due then or now.
60 Tax on real estate bid in by the United States, $923.30; error in former reports, $2,591.52.
61 Judgment in favor of the United States for $50,000; execution issued, returned "Nulla bona."
62 Judgment in favor of the United States for $75,000; execution issued, returned "No property found."
63 Excess of taxes returned on lists, $426.99; amount released by compromise, $51,612.54.
64 Special allowance.
65 Balance due collector from first term transferred, $229.34; error in report No. 596 credited back, $5.93.
66 Released under section 97, act June 30, 1864, $1,053.69; suspended vouchers allowed, $255.30; additional commissions, $1,188.55.
67 Amount of stamps sold by Eichelberger, acting collector, $175,339.92; spirit-stamps twice receipted for, $165.
68 Uncollected taxes by reason of rebel raids.
69 Balance due collector to March 3, 1867.
70 Released by act March 3, 1875, $72; additional vouchers allowed, $18,461.32; drafts credited, $6,596.64; disbursements, $383.47; salary and commissions, $5,281.18; tax on compensation, $43.47; taxes on salaries withheld, $252.38.
71 Additional commissions, $2,486.36; credit balance, $78.87.
72 Error in charging as tax on spirits.
73 The amount of the outstanding balance is claimed by the collector as commissions on deposits, &c., prior to June 30, 1865; claim undetermined.
74 Stationery, &c.
75 Unassessed penalties erroneously charged, $1,775.72; suspended vouchers allowed, $237.35.
76 Error in charging on gaugers' report and statement of bonded spirits, $2,289.97; postage suspended—now allowed, $8.49.
77 Vouchers not heretofore allowed, $922.32; additional commissions, $30.50; released by compromise, $22,971.63; taxes refunded, $10.
78 Error, "abatement on fraudulent vouchers," $5,436.73; released by compromise, $1,601.32.
79 Amount paid under act March 3, 1877.
80 Duplicate charge.
81 Error in footing November, 1866, list.
82 Error in December, 1867, tax-list, $2,000; charged in excess as collections on predecessors' lists, $36,645.87.
83 Judgment for full amount in favor of the United States; execution issued, returned "Nulla bona."
84 Judgment for $50,000 in favor of the United States; property levied upon, but owing to defective title, the United States could not obtain a deed.
85 Cash transferred to successor.
86 Judgment for $6,325.76 in favor of the United States; execution issued, returned "No property found."
87 Taxes in excess on bonded goods, $85,691.18; tax on property bid in by the United States, $2,770; taxes from predecessor charged in excess, $46,066.76; gaugers' fees charged twice, $1,382.20; released by compromise, $20,507.76.
88 Taxes refunded, $100; special allowance, $1,960.88; suspended vouchers allowed, $22.31.
89 Suspended vouchers allowed, $119.48; special allowance, $2,960.68.
90 Error in footing May, 1867, tax-list, $1,000; amount charged in excess, $911.56.
91 Tax on salaries, $48.84; stationery, 95 cents.
92 Released by (private) act of June 22, 1874.
93 Allowed by act of Congress.
94 Duplicate assessments.
95 Duplicate charge, $367.50; error in report No. 4149, $23.43.
96 Suspended vouchers allowed, $289.90; taxes released under section 97, act June 30, 1864, $1,054.16.
97 Released by compromise, $5,660.07; collected by Freeland on Wood's lists, $1,333.61; suspended vouchers allowed, $54.24.
98 Error in adding annual list 1866; duplicate assessments credited back.
99 Amount charged in excess as collections on Pratt's lists, $61,541.32; the same on Bowen's lists, $2.
100 Error in former account.
101 Amount of balance to June 30, 1870, reported erroneously as $478,818.73.
101a Amount charged in excess on October, 1867, list.
102 Collections on predecessors' lists charged in excess.
103 Twice charged, $170,939; error in footing March, 1869, list, $107.
104 Bonded goods.
105 Special allowance, $1,604.94; expenses of depositing money, $180; postage allowed, $6.07.
106 Amount disallowed as short deductions on salaries credited back.
107 Amount charged in excess as collected on predecessors' lists.
108 Released by compromise, $29,101.44.
109 Stationery and postage, $41.82; expenses of depositing money, $301.31.
110 Error in footing annual list 1865, $200; suspended vouchers allowed, $48.12; deficiency in tax, vouchers of assistant assessor, $10.52.
111 Errors in 1866 list.
112 Judgment for $335.18 in favor of the United States; execution issued; returned "Nulla bona."
113 Amount charged in excess.
114 Errors in former reports, $124.15; tax on property bid in by United States, $50; penalties charged in excess, $43.10; suspended vouchers allowed, $60.55.
115 Compromised by act of March 3, 1873, on payment of full amount without interest; full amount of balance deposited in cash, but not yet adjusted.
116 Error in charging taxes on lists not receipted for, $175,000; charged as tax on bonded goods unaccounted for—since accounted for, $152,562.25; excess of gaugers' fees charged to Shook, collected by Bailey, $54.50.
117 Transcripts destroyed by fire at Virginia City previous to suit; no further steps taken, owing to total insolvency of all parties.
118 Claims this amount as commissions on bonded goods; claim undetermined.
119 Error in charging as abated in excess, $0.10; released by compromise, $32,159.19.
121 Judgment for full amount in favor of the United States; in hands of marshal, returnable June term, 1878.
122 Errors in charging items on special-tax lists and as penalties.
123 Unadjusted claims for abatement still pending to nearly or quite close the account.
124 Tax on property bid in by the United States.
125 Tax on real estate bid in by the United States.
126 Amount paid assistant assessors.
127 Allowed by court as commissions on goods shipped in bond, $3,009.10; error in charging as taxes abated in excess, $24.47.
128 Cash transferred to successor, $35,740; error in charging taxes not receipted for or collected, $17,546.
129 Errors in former reports.
130 Amount charged in excess as taxes not receipted for.
131 Suspended vouchers allowed, $409.22; additional commissions allowed, $213.47.
132 Suspended vouchers allowed, $35.86; error in charging penalties, $177.06; excess of gaugers' fees, $80.62; tax on salaries deposited, $46.11.
133 No suit was brought on this collector's bond, owing to a defect which, in a similar case (the United States *vs.* Jackson), had resulted in judgment for defendant; no action will be taken pending the appeal of the Jackson case to the Supreme Court.
134 Amount of balance to June 30, 1870, erroneously reported as $309,711.44.
135 Amount of taxes twice charged, $12,326.63; additional commissions, $480.32; suspended vouchers allowed, $11.65.
136 Judgment in favor United States for $9,345.84; carried on writ of error to circuit court.
137 Stationery, $714.17; taxes in excess, $73.69; errors, $30.13; released by compromise, $662.16.
138 Amount of penalties twice receipted for.
139 Judgment for $100,000 in favor of the United States; execution issued, and $250.47 realized.
140 Erroneously charged as tax on bonded goods, $41,939.50; special deposits with Secretary receipted for as taxes, $148.90.
141 Judgment in favor of defendants, May term, 1877; motion by United States for new trial.
142 Erroneously charged as abated in excess.
143 Suspended vouchers allowed, $8.33; expenses of depositing money, $174.00.
144 Suspended vouchers allowed, $42.75; penalties twice charged, $235.76.
145 Additional commissions, $126.57; suspended vouchers allowed, $137.01.
146 Errors in lists, &c., $2,826.99; suspended vouchers allowed, $137.01.
147 Errors in bonded accounts, $1,947.41; charged in excess, $1,151.91; suspended vouchers allowed, $118.73.
148 Charged in excess as collections on bonded goods, $12,440.56; suspended vouchers allowed, $255.17.
149 Amount twice charged.
150 Additional commissions, $457.54; suspended vouchers allowed, $18.03; expressage, $58.20.
151 Error in footing tax-lists.
152 Judgment in favor of the United States, November term, 1877; execution issued and returned "Nulla bona."
153 Taxes on real estate bid in by the United States, $1,492.78; surplus proceeds of property sold by the United States, $130.44.
154 Suspended vouchers allowed, $66.61; error in charging tax-list, $131,507.60; certificate of deposit improperly credited to him as collector of fifth district of Tennessee, $12,180.66; collected by Faulkner on his lists, $1,046.
155 Released by compromise, $7,475.40; released (sureties) under first bond by decree of court, $3,932.50; erroneously charged, $130.07.
156 Taxes on real estate bid in by the United States, $1,132; errors charged in excess, $3,809.56.
157 Duplicate charges, $13,145.50; taxes on real estate bid in by the United States, $1,780.95; erroneous charges, $2,279.70.
158 Error in charging as abated in excess, $150.77; charged in excess as collections on Hough's lists, $1,422.55.
159 Tax on real estate bid in by the United States.
160 Erroneous charges, $210,831.23; compensation, balance to credit of revenue account, $923.27.
161 Taxes on bonded goods charged as unaccounted—accounted for and released.
162 Allowed under act of February 23, 1875, $2,753.18; error in footing tax-lists, $263.65.
163 Cash transferred to Evans, $2,857; charged in excess as bonded cotton unaccounted for, $5,339.19.
164 Suspended vouchers allowed, $302.93; charged in excess as fines, &c., $72.83; error in receipting for tax-list, $261.50.
165 Released by compromise, $31,554.15; taxes erroneously abated to him as collector of sixth district, $6,433.37.
166 Judgment in favor of the United States; execution issued and returned "No effects."
167 Judgment in 1872 in favor of the United States for $34,164.48; execution issued and returned "No effects."
168 Judgment in favor of the United States; execution issued, and returned "No effects."
169 Credited under act of March 3, 1875, $26,446.28; released by compromise, $22,448.29.
170 Duplicate charges, $2,843.35; taxes on real estate bid in by the United States, $4,492.93; penalties erroneously charged, $2,700.20; released by compromise, $24,565.64.
171 Tax on real estate bid in by the United States, $109; errors in former reports, 3,644.34.
172 Stationery and advertising.
173 Amount credited back.
174 Collected by Keneaster on his lists.
175 Taxes transferred to J. W. Douglass, 19th district, Pennsylvania.
176 Taxes twice receipted for, $2,127; suspended vouchers allowed, $1,056.08.
177 Error in charging list.
178 Proceedings recommended under section 35, act June 30, 1864, by *distress warrant*.
179 Cash transferred to Collector Sullivan for $258.50; suspended vouchers allowed, $96.43; charged in excess as taxes receipted for, $20,379.59.
180 Error in October, 1869, tax-list.
181 Suspended voucher allowed, $90.13; tax on salaries deposited, $128.25.

*Statement of balances due from collectors of internal revenue, made in pursuance of Senate resolution, dated April 16, 1878, as follows: "Be it resolved, That the Secretary of the Treasury be, and he is hereby, directed to report * * * * the amounts due by internal-revenue collectors on the 1st day of July, 1875, and how much, if any, of such amounts remains unpaid; and also the nature or classes of the items or indebtedness."*

State.	District.	Collector.	Internal-revenue balance against collector, July 1, 1875.	Disbursing and compensation balances against the collector, July 1, 1875.	Aggregate balance against the collector, July 1, 1875.	Outstanding balance against the collector, May 31, 1878.	Nature of outstanding indebtedness.		Unadjusted credits.	Balance against the collector after deducting unadjusted credits.	Remarks.
							Cash.	Taxes.			
Alabama	1	T. C. A. Dexter, acting.	$5,766 84		$5,766 84	$5,766 84	$5,766 84				
	1	M. S. Foote	694 06		694 06	694 06	694 06				
	1	John T. Foster	8,819 72		8,819 72	8,819 72	2,932 93	$5,886 79	$4,941 71	$3,878 01	
	2	James Berney	31,186 61		31,186 61	31,186 61	21,529 94	9,656 67	15,620 38	15,566 23	
	2	Francis Widmer	58,024 78	$5,434 06	63,458 84	37,112 63	37,112 63		4,745 40	32,367 23	
	3	Robert Johnston	53,897 89		53,897 89	52,101 61	44,991 24	7,110 37			
Arkansas	1	William J. Patton	18,698 12		18,698 12						Balance paid and account closed.
	1	A. G. Ryan	82 68		82 68						Do.
	1	H. D. Halsey, acting.	1,508 75		1,508 75						Do.
	2	William J. Patton	40,657 84		40,657 84						Do.
	3	R. W. Wishard	17,352 25		17,352 25	17,352 25	9,904 35	7,447 90	25 60	17,326 65	
	3	Henry W. Fick	47 457 33		47,457 33						Balance paid and account closed.
California	1	Frank Soulé	18,373 36		18,373 36	18,373 36	18,373 36				
	1	J. O. Rawlins	30,881 18		30,881 18	30,881 18	30,881 18				
	2	James H. Morgan	5,567 94		5,567 94	5,121 54	5,121 54				
	4	Alfred Briggs		5,158 11	5,158 11	5,158 11	5,158 11				
	2	W. N. Slocum	4,257 62		4,257 62	4,257 62	4,257 62				
Connecticut	1	Mark Howard	2,486 54		2,486 54	10	10				
Dakota		G. P. Bennett	1,387 00		1,387 00						Balance paid and account closed.
Delaware		C. H. B. Day	4,652 70		4,652 70						Do.
Florida		M. A. Williams	3,841 18		3,841 18	3,841 18	3,387 50	453 68	96 00	3,745 18	
		Horatio Jenkins, jr	20,209 55		20,209 55	20,209 55	20,209 55		1,513 41	18,696 14	
Georgia	1	John H. Gould	49,506 49	176 93	49,683 42	49,683 42	49,683 42				
	4	James Atkins	26,032 36	5,043 13	31,075 49	7,945 36	7,945 36				
Idaho		J. Carey Geer	21,736 86	3,014 71	24,751 57	24,751 57	24,751 57				
		John Cummins	241 05		241 05	241 05	241 05				
Illinois	1	John M. Corse	852 56		852 56	852 56		852 56	852 56		
	1	Philip Wadsworth	882,317 44		882,317 44						Balance paid and account closed.
	5	Enoch Emery	76,084 33		76,084 33						Do.
	5	R. H. Whiting	654,613 82		654,613 82						Do.
	8	John T. Harper	768,709 35		768,709 35	114,970 29	104,174 32	10,795 97			
Indiana	1	Andrew Lewis	13,804 93		13,804 93	13,804 93	12,933 68	871 25			

Statement of balances due from collectors of internal revenue, &c.—Continued.

State.	District.	Collector.	Internal-revenue balance against collector, July 1, 1875.	Disbursing and compensation balances against the collector, July 1, 1875.	Aggregate balance against the collector, July 1, 1875.	Outstanding balance against the collector, May 31, 1878.	Nature of outstanding indebtedness.		Unadjusted credits.	Balance against the collector after deducting unadjusted credits.	Remarks.
							Cash.	Taxes.			
Indiana	4	James L. Yater	$33,928 08	.....	$33,928 08	$23,928 08	$23,928 08	.....	.....	.....	
Iowa	2	Norman Boardman	164,714 32	.....	164,714 32	.....	.....	.....	.....	.....	Balance paid and account closed.
	6	Wm. C. Stanberry	1,195 18	.....	1,195 18	1,195 18	1,195 18	.....	.....	.....	
Kentucky	1	John D. Kelley	11,871 50	.....	11,871 50	9,631 00	9,631 00	.....	$6,786 26	$2,844 74	
	1	John B. Hall	6,712 58	.....	6,712 58	3,574 78	49 58	$3,525 20	514 76	3,060 02	
	1	George O. Yeiser	1,120 45	.....	1,120 45	1,120 45	.....	1,120 45	1,120 45	.....	
	2	James A. Wallace	336 50	.....	336 50	.....	.....	.....	.....	.....	Balance paid and account closed.
	2	O. P. Johnson	12,391 46	.....	12,391 46	.....	.....	.....	.....	.....	Do.
	6	John S. Nixon	1,296,052 71	.....	1,296,052 71	.....	.....	.....	.....	.....	Do.
	9	F. C. Barnes	119,849 89	.....	119,849 89	102,277 82	80,137 19	22,140 63	.....	.....	
Louisiana	1	George S. Denison	5,825 69	.....	5,825 69	4,346 84	4,346 84	.....	.....	.....	
	1	W. R. Whitaker	11,182 06	.....	11,182 06	11,182 06	11,182 06	.....	.....	.....	
	1	Charles Smith	84,334 26	$237 22	84,571 48	66,215 67	44,702 60	21,513 07	.....	.....	
	1	William P. Benton	31,453 65	.....	31,453 65	18,540 25	18,540 25	.....	.....	.....	
	1	James B. Steedman	593,866 82	.....	593,866 82	359,104 01	203,622 00	155,482 01	.....	.....	
	2	Alfred Duperier	91,298 10	.....	91,298 10	23,305 15	10,080 91	13,224 24	.....	.....	
	2	E. M. Bouligny	125,281 60	.....	125,281 60	89,626 92	49,151 09	40,475 83	.....	.....	
	2	John S. Chapman	28,830 46	.....	28,830 46	20,611 41	20,611 41	.....	.....	.....	
	2	B. T. Beauregard	19,256 53	.....	19,256 53	6,761 58	5,561 58	1,200 00	1,200 00	5,561 58	
	3	Lewis B. Collins	651,547 21	.....	651,547 21	673,861 79	672,613 63	1,248 16	.....	.....	
	3	Eugene Tisdale	166,041 16	2,438 52	168,479 68	156,907 76	154,554 06	2,353 70	.....	.....	
Maryland	5	George W. Dawson	2,115 25	.....	2,115 25	2,115 25	2,115 25	.....	2,115 25	.....	
	5	D. L. Stanton	44,668 07	.....	44,668 07	22,166 58	21,653 33	513 25	.....	.....	
	5	George W. Sands	10,807 38	.....	10,807 38	5,468 16	5,468 16	.....	.....	.....	
Massachusetts	3	W. H. McCartney	9,810 03	3,545 92	13,355 95	12,234 58	4,795 99	7,438 59	.....	.....	
	5	J. V. Browne	5,460 76	.....	5,460 76	3,868 30	3,868 30	.....	.....	.....	
	7	John Nesmith	5,731 64	.....	5,731 64	2,074 49	2,074 49	.....	.....	.....	
Michigan	2	Josiah Andrews	36 67	.....	36 67	.....	.....	.....	.....	.....	Balance paid and account closed.
	5	Robert C. Hutton	319 59	.....	319 59	.....	.....	.....	.....	.....	Do.
	6	Wm. B. McCreery	59,588 26	.....	59,588 26	.....	.....	.....	.....	.....	Do.
Minnesota	1	John N. Hall	20,103 23	.....	20,103 23	.....	.....	.....	.....	.....	Do.
	2	Jared Benson	319 93	.....	319 93	319 93	319 93	.....	.....	.....	
Mississippi	1	Edwin G. Cook	48,904 90	.....	48,904 90	.....	.....	.....	.....	.....	
	2	F. S. Hunt	155,024 96	.....	155,024 96	139,463 15	62,533 14	76,930 01	.....	.....	
	2	Martin Keary	9,285 50	.....	9,285 50	9,285 50	2,056 06	7,229 44	.....	.....	

	2	J. T. Smith	455 43	.....	455 43	.....	.....	.....	.....	.....	Balance paid and account closed.
	2	H. B. McClure	547 58	.....	547 58	.....	.....	.....	.....	.....	Do.
	2	B. H. Sheppard	71,801 22	.....	71,801 22	70,650 77	.....	70,650 77	7,297 65	63,353 12	
	3	W. C. V. Hicks	6,629 39	.....	6,629 39	4,909 59	.....	4,909 59	.....	.....	
	3	E. P. Hatch	32,126 28	.....	32,126 28	.....	.....	.....	.....	.....	Balance paid and account closed.
	3	B. B. Emory	57,497 84	.....	57,497 84	44,471 05	20,324 21	24,146 84	.....	.....	
Missouri	1	Constantine Maguire.	919,453 40	.....	919,453 40	.....	.....	.....	.....	.....	Balance paid and account closed.
	2	James B. Maupin	18,733 10	.....	18,733 10	15,451 34	14,546 80	904 54	4,000 00	11,451 34	
	2	Lindsay Murdock	1,049 86	.....	1,049 86	.....	.....	.....	.....	.....	Balance paid and account closed.
	2	Wm. M. Hamilton	3,007 05	.....	3,007 05	.....	.....	.....	.....	.....	Do.
	3	John M. Cashman	51,917 10	.....	51,917 10	.....	.....	.....	.....	.....	Do.
	5	Jas. A. McCullah	79 99	.....	79 99	.....	.....	.....	.....	.....	Do.
	6	A. N. Schuster	7,532 03	.....	7,532 03	.....	.....	.....	.....	.....	Do.
	6	W. Z. Ransom	5,025 84	.....	5,025 84	.....	.....	.....	.....	.....	Do.
Montana	....	Samuel L. Watson	86 25	.....	86 25	.....	.....	.....	.....	.....	Do.
Nevada	....	James S. Dilley	37,774 97	.....	37,774 97	37,774 97	37,774 97	.....	.....	.....	
New Mexico	....	A. P. Sullivan	626 16	.....	626 16	.....	.....	.....	.....	.....	Balance paid and account closed.
	....	Charles Blumner	10,860 22	.....	10,860 22	8,375 15	7,508 72	866 43	.....	.....	
New York	2	M. H. Treadwell	123,145 27	7,044 46	130,189 73	10,936 57	7,044 46	3,892 11	.....	.....	
	4	J. F. Bailey	602,134 27	.....	602,134 27	602,134 27	91,358 24	510,776 03	436,611 98	165,522 29	
	8	Geo. P. Putnam	2,190 93	.....	2,190 93	2,190 93	2,190 93	.....	.....	.....	
	8	Alex. Spaulding	1,284 52	636 85	1,921 37	636 85	636 85	.....	.....	.....	
	13	William Masten	54,101 44	.....	54,101 44	.....	.....	.....	.....	.....	Balance paid and account closed.
	13	C. S. Clay	7 06	562 34	569 40	569 40	569 40	.....	.....	.....	
	25	D. H. Abell	.....	234 73	234 73	234 73	234 73	.....	.....	.....	
	29	J. B. Halsted	18,933 98	.....	18,933 98	18,933 98	18,933 98	.....	18,933 98	.....	
	30	George R. Kibbe	223,880 16	.....	223,880 16	.....	.....	.....	.....	.....	Balance paid and account closed.
	32	J. F. Bailey	126,757 55	.....	126,757 55	126,757 55	126,757 55	.....	88,075 85	38,681 07	
North Carolina	1	W. C. Loftin, act'g	1,621 36	.....	1,621 36	1,621 36	.....	1,621 36	.....	.....	
	2	L. G. Estes	.....	1,643 37	1,643 37	1,643 37	1,643 37	.....	.....	.....	
	2	George P. Peck	12,283 78	.....	12,283 78	8,161 79	6,922 49	1,239 30	486 17	7,675 62	
	3	C. W. Woollen	39,209 96	.....	39,209 96	39,209 96	8,010 60	31,199 36	18,695 43	20,514 53	
	3	W. B. Richardson	13,646 36	.....	13,646 36	13,646 36	7,942 57	5,703 79	5,703 79	7,942 57	
	4	John Read	11,054 35	.....	11,054 35	11,054 35	55 91	10,998 44	10,431 18	623 17	
	5	W. H. Thompson	12,710 57	.....	12,710 57	12,710 57	8,590 33	4,120 24	4,505 00	8,205 57	
	5	John Crane	195,404 93	.....	195,404 93	137,344 16	44,732 19	92,611 97	.....	.....	
Ohio	3	F. Van Derveer	3,990 28	.....	3,990 28	.....	.....	.....	.....	.....	Balance paid and account closed.
	5	C. B. Wilson	1,486 48	.....	1,486 48	.....	.....	.....	.....	.....	Do.
	6	David Sanders	4,400 46	.....	4,400 46	.....	.....	.....	.....	.....	Do.
	10	S. A. Raymond	22,970 19	.....	22,970 19	.....	.....	.....	.....	.....	Do.
	10	Harry Chase	24,923 87	.....	24,923 87	24,923 87	24,923 87	.....	100 00	24,823 87	
	13	W. R. Sapp	49,177 20	.....	49,177 20	.....	.....	.....	.....	.....	Balance paid and account closed.
	15	W. P. Richardson	3,876 65	.....	3,876 65	3,196 03	3,196 03	.....	1,508 00	1,688 03	
Oregon	....	L. W. Coe	1,026 12	.....	1,026 12	1,026 12	1,026 12	.....	.....	.....	
	....	O. B. Gibson	48,807 20	.....	48,807 20	.....	.....	.....	.....	.....	Balance paid and account closed.
Pennsylvania	1	John B. Kenney	102,581 97	.....	102,581 97	102,581 97	.....	102,5 1 97	43,119 04	59,462 93	
	2	John H. Diehl	20,015 43	.....	20,015 43	20,015 43	13,997 72	6,017 71	.....	.....	
	3	S. M. Zulick	221,980 56	2,226 62	224,207 18	224,207 18	3,774 69	220,432 49	.....	.....	
	4	John Riley	141,935 49	.....	141,935 49	141,935 49	141,935 49	.....	.....	.....	
	4	John Hancock	9,882 50	.....	9,882 50	9,882 50	.....	9,882 50	.....	.....	
	6	J. R. Breitenbach	206 11	.....	206 11	.....	.....	.....	.....	.....	Balance paid and account closed.

Statement of balances due from collectors of internal revenue &c.—Continued.

State.	District.	Collector.	Internal revenue balance against collector, July 1, 1875.	Disbursing and compensation balances against the collector, July 1, 1875.	Aggregate balance, against the collector, July 1, 1875.	Outstanding balance against the collector, May 31, 1878.	Nature of outstanding indebtedness.		Unadjusted credits.	Balance against the collector after deducting unadjusted credits.	Remarks.
							Cash.	Taxes.			
Pennsylvania ..	19	J. W. Douglass....	$916 99	.....	$916 99	$916 99	$916 99	.....	.....	.....	
	20	P. R. Gregg	169 28	.....	169 28	.....	.....	.....	.....	.....	Balance paid and account closed.
	23	Robert L. Brown..	1,180 60	.....	1,180 60	.....	.....	.....	.....	.....	Do.
	23	Henry C. Witter..	194 45	.....	194 45	.....	.....	.....	.....	.....	Do.
South Carolina.	1	M. Moses	50,468 94	.....	50,468 94	44,257 74	.....	$44,257 74	.....	.....	
	2	F. A. Sawyer.....	35,920 91	$418 80	36,339 71	20,124 17	418 80	19,705 37	.....	.....	
	3	C. L. Anderson....	41,904 57	.....	41,904 57	.....	.....	.....	.....	.....	Balance paid and account closed.
Tennessee	1	Reuel Hough	42,761 80	.....	42,761 80	17,761 80	17,761 80	.....	$1,760 00	$16,001 80	
	2	H. L. Norvell	96,496 78	.....	96,496 78	42,528 79	529 71	41,999 08	.....	.....	
	3	P. A. Wilkinson ..	81,612 89	.....	81,612 89	2,397 44	1,058 79	1,338 65	.....	.....	
	4	Joseph Ramsey...	80 352 39	.....	80,352 39	3,425 95	3,425 95	.....	.....	.....	
	4	James Mullins...	13,680 26	.....	13,680 26	13,680 26	3,983 20	9,697 06	9,697 06	3,983 20	
	5	H. L. Norvell	11,417 04	.....	11,417 04	1,511 33	1,511 33	.....	1,511 33	.....	
	6	W. C. Webb.....	35,862 84	.....	35,862 84	420 49	263 24	157 25	.....	.....	
	6	Fielding Hurst ...	8,974 20	.....	8,974 20	8,974 20	8,974 20	.....	8,408 95	565 25	
	6	E. T. McGee	560 69	.....	560 69	417 64	417 64	.....	.....	.....	
	6	Jesse Taylor.....	23,840 92	78 70	23,919 62	14,648 96	11,799 71	2,849 25	.....	.....	
	7	Frank Travis.....	26,560 19	.....	26,560 19	26,560 19	26,560 19	.....	.....	.....	
	8	R. S. Saunders	105,606 64	.....	105,606 64	105,606 64	38,599 25	67,007 39	53,838 21	51,768 43	
Texas.....	1	Milton Stapp	8,263 36	.....	8,263 36	565 52	522 96	42 56	.....	.....	
	1	J. N. Camp.....	40,772 76	.....	40,772 76	40,772 76	6,128 34	34,644 42	19,345 11	21,427 65	
	1	F. W. Glenn.....	58,062 70	.....	58,062 70	27,757 00	8,821 48	18,935 52	.....	.....	
	2	R. B. Kingsbury ..	189,580 10	.....	189,580 10	14,597 76	.....	14,597 76	.....	.....	
	2	R. H. Lane	6,728 78	9,874 10	16,602 88	28,926 86	11,612 63	17,314 23	.....	.....	
	2	W. A. Saylor.....	33,380 29	.....	33,380 29	661 18	661 18	.....	16 08	645 10	
	2	L. G. Brown	23,956 82	.....	23,956 52	.....	.....	.....	.....	.....	Balance paid and account closed.
	3	R. N. Lane	34,384 03	.....	34,384 03	34,384 03	10,000 00	24,384 03	34,384 03	.....	
	3	H. M. Taylor.....	10 40	.....	10 40	.....	.....	.....	.....	.....	Balance paid and account closed.
	4	L. D. Evans.....	33,105 05	.....	33,105 05	.....	.....	.....	.....	.....	Do.
	4	D. B. Bonfoey	62,934 70	.....	62,934 70	62,934 70	55,778 88	7,155 82	13,761 82	49,172 88	
Virginia	1	E. K. Snead	55,353 54	.....	55,353 54	11,107 82	5,128 14	5,979 68	3,601 76	7,506 06	
	2	Samuel R. Sterling	55,402 05	.....	55,402 05	.....	.....	.....	.....	.....	Balance paid and account closed.
	2	James P. Prince ..	48,402 94	.....	48,402 94	11,115 20	5,617 52	5,497 68	.....	.....	
	3	N. D. Keneaster...	16,813 85	.....	16,813 85	17,168 75	15,537 80	1,630 95	.....	.....	Balance increased since July 1, 1875.
	4	J. H. Anderson....	34,633 92	.....	34,633 92	34,633 92	.....	34,633 92	.....	.....	

	4	William E. Wells	52,277 24	.....	52,277 24	42,848 25	3,062 04	39,786 21	.....	.....	
	4	A. P. Lathrop	14,262 92	.....	14,262 92	4,379 64	3,857 55	522 09	.....	.....	
	4	W. H. H. Stowell	19,697 68	.....	19,697 68	3,203 39	3,203 39	.....	.....	.....	
	5	E. B. Pendleton	233,130 82	.....	233,130 82	.....	.....	.....	.....	.....	Balance paid and account closed.
	6	Samuel R. Sterling	53,698 41	.....	53,698 41	.....	.....	.....	.....	.....	Do.
	7	T. L. Sanborn	163 96	307 19	471 15	362 25	362 25	.....	.....	.....	
	8	George W. Jackson	26,501 44	.....	26,501 44	15,033 08	.....	15,033 08	.....	.....	
Vermont	3	A. J. Crane	.....	3,076 46	3,076 46	3,076 46	3,076 46	.....	.....	.....	
Wash. Ter.	....	Samuel Coulter	73 23	.....	73 23	.....	.....	.....	.....	.....	Balance paid and account closed.
	....	Hazard Stevens	.....	1,574 18	1,574 18	.....	.....	.....	.....	.....	Do.
West Virginia	1	James C. Orr	22,248 60	.....	22,248 60	8,801 01	6,920 55	1,880 46	.....	.....	
	2	J. V. Boughner	12,711 88	.....	12,711 88	.....	.....	.....	.....	.....	Balance paid and account closed.
	3	J. H. Oley	.....	511 58	511 58	511 58	511 58	.....	.....	.....	
Wisconsin	1	George Q. Erskine	115,429 95	.....	115,429 95	.....	.....	.....	.....	.....	Balance paid and account closed.

RECAPITULATION.

Amount of revenue balance against collectors not in office July 1, 1875	$11,930,263 72	
Amount of disbursing and compensation balance against collectors not in office July 1, 1875	53,237 98	
Amount of aggregate balance against collectors not in office July 1, 1875		$11,983,501 70
Amount of outstanding balance May 31, 1878, cash	2,674,986 90	
Amount of outstanding balance May 31, 1878, taxes	1,910,586 74	
Total amount of outstanding balance May 31, 1878		4,585,573 64
Amount of unadjusted credits		825,324 20
Amount of balance after deducting unadjusted credits		3,760,249 44

Statement showing the aggregate amount of internal-revenue collections from 1863 *to* 1877, *both inclusive.*

For the fiscal year ending June 30, 1863	$41,003,192 93	For the fiscal year ending June 30, 1872	$131,770,946 73
For the fiscal year ending June 30, 1864	117,145,748 52	For the fiscal year ending June 30, 1873	114,075,456 08
For the fiscal year ending June 30, 1865	211,129,529 17	For the fiscal year ending June 30, 1874	102,644,746 98
For the fiscal year ending June 30, 1866	310,906,984 17	For the fiscal year ending June 30, 1875	110,545,154 23
For the fiscal year ending June 30, 1867	265,920,474 65	For the fiscal year ending June 30, 1876	117,237,086 81
For the fiscal year ending June 30, 1868	191,180,564 28	For the fiscal year ending June 30, 1877	118,995,184 25
For the fiscal year ending June 30, 1869	160,039,344 29		
For the fiscal year ending June 30, 1870	185,235,867 97	Total	2,321,841,457 30
For the fiscal year ending June 30, 1871	144,011,176 24		

State.	District.	Collector.	Amount released by compromise.	Amount realized by compromise.	Compromise recommended by—	Remarks.
Arkansas.....	1	E. R. McGuire	$62,358 09	$20,000 00	United States attorney for western district of Arkansas.	Judgment was obtained for the penalty of the bond, $50,000, execution issued, and the United States marshal reported that the property levied upon would not sell for more than $5,000. An offer of compromise to pay $20,000 was then made, and the United States attorney's recommendation was concurred in by the Solicitor. The offer was accepted and the amount paid.
Delaware.....	1	C. H. B. Day	.....	4,652 70	United States attorney for Delaware.	Judgment was rendered in favor of the defendants at the March term, 1875, of the United States circuit court for Delaware, and a motion for a new trial granted. An offer to pay $6,849.18, in compromise of the claims of the United States, being on account of internal revenue, $4,652.70, on account of direct taxes, $7,337.69, was then made, and recommended by the United States attorney, for the reason that on the trial the jury failed to comprehend the nature of the credits claimed by the defendants, and it was believed that a jury could not be obtained that would understand and reject them. The views expressed by the United States attorney were concurred in by the Solicitor, and the offer was accordingly accepted. The full amount due on account of internal revenue was applied to balance and close the collector's account, nothing being released, and the remainder was applied to his direct-tax account, leaving $5,096.21 to be released.
Illinois	3	Henry A. Mix	4,948 04	10,000 00	Commissioner of Internal Revenue and Attorney-General.	The United States attorney took a judgment by consent in this case for $10,000. Subsequently the administrator of Mix's estate offered to pay $10,000, and all costs, in compromise of the claims of the United States. The Solicitor of Internal Revenue, in recommending the acceptance of this offer, says: "It would appear to be a matter of doubt whether, in fact, anything is due to the government in this case, although the probabilities indicate that there is as much due as is here offered." The offer of compromise was accepted by the Secretary, in accordance with the terms expressed, and the amount paid.
Indiana.....	4	James L. Yater ...	.....	10,000 00	United States attorney for Indiana.	An offer of $10,000 was made in compromise of the claims of the United States, and the United States attorney's recommendation was concurred in by the Solicitor, for the reason that the late collector gave two bonds, and it was thought to be impossible to fix the responsibility under each bond with sufficient definiteness to satisfy a jury. The offer was accepted and the amount paid, but the terms of the compromise release only the sureties under the collector's bond, dated March 24, 1863, and not the principal, or his sureties under his bond of September 6, 1862. A balance of $23,928.08 still stands against the collector.
	7	J. J. Alexander ...	12,461 70	10,000 00	United States attorney, goveror, and other State officials of Indiana.	Recommendations concurred in by the Solicitor for the following reasons: The death of the collector, his high character, and doubt as to the nature of the balance due, whether cash or uncollected taxes. The proposition to compromise was accepted, and the amount offered was deposited to the credit of the United States Treasurer.

Kansas		John Speer	147,622 59	11,000 00	United States attorney for Kansas and Chief Justice Kingman, of Kansas.	Recommendations concurred in by Solicitor and Commissioner of Internal Revenue, Attorney-General, and Secretary of the Treasury, for the reason that the amount offered, it was thought, was more than could be realized after years of litigation. The offer was accepted and the amount paid into the Treasury.
Louisiana	3	Lewis B. Collins		1,241 75	United States attorney for Louisiana.	Judgment was rendered in favor of the United States for the penalty of the bond, $50,000. Execution was issued, and returned by the United States marshal, "nothing made." One of the sureties, F. J. Herron, then made an offer of compromise of the judgment as to him alone. The United States attorney's recommendation was concurred in by the Solicitor, for the reason that nothing could be recovered from proponent by legal proceedings. The offer was accepted and its terms have been complied with.
Maryland	1	J. T. McCullough	51,612 54	10,000 00	United States attorney for Maryland.	Recommendation concurred in by the Solicitor, on the ground that it was the best that could be done, the parties to the bond being in such a pecuniary condition that no more than $10,000 could be recovered upon an execution. The offer was accepted and its terms have been complied with.
Michigan	5	Dexter Mussey	22,971 63	4,000 00	United States attorney for eastern district of Michigan.	Recommendation concurred in by Solicitor, on the ground that neither the late collector nor his deputies failed to account for and pay over all moneys which came into their hands, the amount released being uncollected taxes. The offer of compromise was accepted and its terms have been complied with.
	5	Benj. C. Gunn	1,601 32		United States attorney for eastern district of Michigan, Hons. O. D. Conger and S. Brownell.	An offer of compromise to pay costs of suit was made and accepted, with the concurrence of the Solicitor, for the reason that the late collector was judicially shown to be clear of any criminal intent, and that the sureties had paid all the claims of the government against the late collector, except a fine imposed upon him for alleged fraud. The terms of the offer have been complied with.
Mississippi	3	W. W. Willis	40,517 91	500 00	United States attorney for northern district of Mississippi.	Recommendation concurred in by the Solicitor, on the ground of the utter insolvency of the parties to the bond. The offer of compromise was accepted and its terms have been complied with.
Missouri	1	Barton Able	20,507 76	25,000 00	United States attorney for eastern district of Missouri.	Recommendation concurred in by the Solicitor, on the grounds that the late collector waived his claim for special allowance, and that a motion for a new trial was pending, and would, if successful, involve a long and expensive trial. The offer of compromise was accepted and its terms have been complied with.
New York	2	A. M. Wood	5,660 07	3,107 81	United States attorney for eastern district of New York.	Recommendation concurred in by Solicitor, on the ground that a legal recovery of an amount greater than that offered was very doubtful. The offer was accepted and its terms have been complied with.
	4	J. F. Bailey			United States attorney for the southern district of New York.	Recommendation concurred in by the Solicitor, on the grounds that the collector having given two bonds, it was thought impracticable to fix the responsibility under each bond with sufficient definiteness to satisfy a jury, and the length of time it would necessarily take before the questions raised by the defendants could be finally decided. The amounts to be released have not been considered by the accounting-officers, although the terms of the offer of compromise have been complied with to the extent of depositing the sum offered to the credit of the United States Treasurer.
	32	....do		50,000 00		
	13	William Masten	29,101 44	25,000 00	United States attorney for eastern district of New York.	Recommendation concurred in by the Solicitor, on the ground of difficulty in so dividing the responsibility under the different bonds as to make it clear to a jury, and of a defect in the bonds, as held by the court in the case of George W. Jackson, eighth district of Virginia, the defect being a failure to state in the body of the bond the district for which the defendant was appointed a collector of taxes. (In the case of Jackson, an appeal has been taken to the Supreme Court.) The offer of compromise has been complied with, having been accepted by the Secretary.

State.	District.	Collector.	Amount released by compromise.	Amount realized by compromise.	Compromise recommended by—	Remarks.
New Jersey....	1	William S. Sharpe.	$6,766 18	$12,500 00	Attorney-General of the United States, Hons. M. L. Ward, W. A. Newell, and others.	Recommendations concurred in by the Commissioner of Internal Revenue, on the ground that the late collector did not appear to be criminally at fault, or to have been in any way pecuniarily benefited; that his defalcation occurred in part through the dishonesty of certain of his deputies; and that, should the government press for the full amount of the balance, his sureties would be utterly ruined, the estate of the late collector being covered to more than its full value with prior liens. The offer was accepted and its terms have been complied with.
North Carolina.	2	L. G. Estes.....	32,159 19	17,500 00	United States attorney for eastern district of North Carolina, Hon. J. M. Leach, and Commissioner of Internal Revenue.	Recommendations concurred in by the Solicitor, on the ground of the utter insolvency of the sureties. The offer of compromise was accepted and its terms have been complied with.
Ohio.....	4	J. W. Frizell.....	10,645 56	25,000 00	United States attorney for southern district of Ohio.	Recommendation concurred in by Solicitor. At the April term, 1871, United States circuit court for southern district of Ohio, a judgment in favor of the United States was obtained for the sum of $36,922.64, and appealed by the defendants to the Supreme Court. After judgment the offer of compromise named was made, its acceptance being recommended on the ground of doubt as to the circuit court's decision being affirmed by the Supreme Court, and, also, if affirmed, of doubt as to the possibility of collecting a larger sum than that offered. The offer was accepted and its terms have been complied with.
	....	A. P. Stone.....	56,199 95	50,000 00	Supervisor Cowan	Recommendation concurred in by Commissioner of Internal Revenue. The ground given is the great hardship to the sureties, in case of enforced payment of the whole balance, resulting in their financial ruin, the estate of the late collector being entirely insolvent. Doubt was expressed as to whether more than the sum offered in compromise could be collected by legal process. The offer was accepted and its terms have been complied with.
Pennsylvania..	3	W. J. Wainwright.	662 16	1,654 24	United States attorney for eastern district of Pennsylvania.	Recommendation concurred in by Solicitor, on the ground that after judgment a law of Congress was passed allowing to certain collectors credits similar to those claimed by the defendant and disallowed by the accounting-officers. It was deemed but just to give the defendant the benefit of this law. The terms of the compromise have been complied with.
Tennessee	2	J. T. Abernathy...	7,475 40	7,500 00	Senator Brownlow, Collector Cooper, and United States attorney for eastern district of Tennessee.	Recommendations concurred in by Solicitor. A judgment in favor of the United States was rendered for $14,975.40 Subsequently the offer to pay $7,500 in compromise was made, and its acceptance favored on the ground that the amount offered was as large as could be recovered in any other way. It was accepted and its terms have been complied with.

Texas	2	R. H. Lane			United States attorney for western district of Texas and Commissioner of Internal Revenue.	An offer to pay in compromise the sum of $6,728.78 was made, and its acceptance favored (the Solicitor concurring) on the ground that the recovery of a greater sum by legal process was very doubtful. The terms of the offer have not, as yet, been complied with by proponents.
Virginia	2	S. R. Sterling	31,554 15	2,856 31	Hon. J. T. Harris and United States attorney for western district of Virginia.	Recommendation concurred in by the Solicitor, on the ground that all parties to the bonds are insolvent.
	6	....do	24,565 64			
	2	Simon Stone	110,383 61	30,000 00	United States attorney for eastern district of Virginia.	Recommendation concurred in by Solicitor, on the ground that a considerable portion of the amount charged was uncollected taxes; that the sureties had paid the full penalty of the bond and been discharged, and that the estate of the late collector would not yield, if sold, as much as the amount offered in compromise. The offer was accepted and its terms have been complied with.
	5	E. B. Pendleton	22,443 29	5,500 00	United States attorneys for western district of Virginia and for West Virginia.	Recommendations concurred in by Solicitor, on the ground of the insolvency of all the parties to the bond. The offer of compromise was accepted and its terms have been complied with.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 98.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

RECOMMENDING

An appropriation for the payment of certain expenses of the commissioners appointed to attend the conference provided for in the act of February 28, 1878, to authorize the coinage of the standard silver dollar and to restore its legal-tender character.

JUNE 13, 1878.—Read, referred to the Committee on Appropriations, and ordered to be printed.

To the Senate and House of Representatives:

In transmitting, herewith, to Congress a communication from the Secretary of State on the subject of the conference provided for in the act of February 28, 1878, entitled "An act to authorize the coinage of the standard silver dollar, and to restore its legal-tender character," I respectfully recommend that an adequate appropriation be made for certain expenses of the conference and of the commissioners attending the same on behalf of the United States, as suggested in the communication of the Secretary of State.

R. B. HAYES.

EXECUTIVE MANSION, *June* 12, 1878.

To the PRESIDENT:

The Secretary of State has the honor to report that of the foreign governments invited, pursuant to the act of Congress of the 28th of February last, to join the United States in a conference to adopt a common ratio between gold and silver for the purpose of establishing internationally the use of bi-metallic money, those of the following countries have formally accepted the invitation of this government:

France, Greece, Hungary, Italy, The Netherlands, Russia, and Switzerland.

Further, that the remainder of the countries invited, viz, Austria, Belgium, Germany, and Great Britain, although not yet decided, are giving the matter serious consideration.

With regard to the capital to be designated for the meeting of the proposed conference, France has proposed Paris, Russia has expressed a preference for a European city, and The Netherlands leaves the question to the decision of the United States.

The acceptance of the invitation of this government by so many European nations will make it the duty of the President, under the pro-

visions of the act, to nominate to the Senate the commissioners to attend the conference on the part of the United States. In this connection it is respectfully submitted that some provision should be made for the due proportion of the general expenses of the conference which should be borne by this government, as well as for a secretary and other clerical assistants to the commissioners of the United States in their attendance upon the conference.

Respectfully submitted.

WM. M. EVARTS.

DEPARTMENT OF STATE,
Washington, June 10, 1878.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 99.

LETTER

FROM

THE SECRETARY OF WAR,

COMMUNICATING,

In answer to a Senate resolution of June 8, 1878, *information in relation to the date at which the government took possession of certain railroads in the State of North Carolina.*

JUNE 15, 1878.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, June 15, 1878.

The Secretary of War has the honor to transmit to the United States Senate, in response to Senate resolution dated the 8th instant, as follows:

Resolved, That the Secretary of War communicate to the Senate all such information as may be in the War Office in relation to when the government took possession of the Atlantic and North Carolina Railroad, the Raleigh and Gaston Railroad, the Wilmington and Weldon Railroad, and the North Carolina Railroad; how long the government had possession of the same; what rates of fares and freight it established; and what were the gross receipts of money received on account of freights and fares from and after the 1st day of May, A. D. 1865—

the report of the Quartermaster-General, furnishing the information desired as far as it is possible to so do.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT *of the United States Senate.*

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, June 14, 1878.

To the Honorable the Secretary of War:

SIR: In reply to the following Senate resolution of June 8, 1878, to wit:

Resolved, That the Secretary of War communicate to the Senate all such information as may be in the War Office in relation to when the government took possession of the Atlantic and North Carolina Railroad, the Raleigh and Gaston Railroad, the Wilmington and Weldon Railroad, and the North Carolina Railroad; how long the government had possession of the same; what rates of fares and freight it established; and what were the gross receipts of money received on account of freights and fares from and after the 1st day of May, A. D. 1865—

I have the honor to report as follows:

ATLANTIC AND NORTH CAROLINA RAILROAD.

The Atlantic and North Carolina Railroad between Morehead City and New Berne, N. C., thirty-six miles, was taken possession of soon after the capture of New Berne, March 14, 1862; the exact date I cannot give. In January, 1865, the road was opened to Batchelor's Creek, forty-four miles, and on March 25, 1865, to Goldsboro', ninety-five miles.

It remained in the possession and under the control of the government, as aforesaid, with the exception of a few days on two occasions, when it was broken by rebel raids between Morehead City and New Berne, till October 25, 1865, three years seven and one-third months, when the United States relinquished control and the company resumed possession thereupon.

RALEIGH AND GASTON RAILROAD.

A portion only of the Raleigh and Gaston Railroad, twenty-five miles, was at any time in the possession of the government, and that for a few days only, to wit, from about April 21 to May 3, 1865.

Col. W. W. Wright, chief engineer of military railroads of North Carolina, reports as follows, under date of May 20, 1865:

> On the 21st of April, 1865, I went out to Cedar Creek, on the Raleigh and Gaston Railroad, twenty-five miles from Raleigh, to meet the president of that company and see if we could borrow some stock (rolling-stock) from them.
>
> By direction of General Sherman, I agreed with him to rebuild the bridge over Cedar Creek for the use of four locomotives and forty cars for as long a time as they might be required for military purposes. We built the bridge, but the surrender of Johnston and the arrival of more stock from the north made it unnecessary to call on the company for the fulfillment of their part of the contract. * * * The bridge was completed on the 3d of May, and the road, never having been formally in our possession, was at once commenced to be operated by the company.

The repair-shops of the company at Raleigh, and that portion of their track between their shops and the North Carolina Railroad depot, were used jointly by the company and the government until July 20, 1865.

WILMINGTON AND WELDON RAILROAD.

On the arrival of the Army under General Sherman at Goldsboro', March 25, 1865, the work of reconstructing the Wilmington and Weldon Railroad was commenced; on April 4 the repairs were completed to Wilmington, eighty-five miles from Goldsboro', and trains commenced running. The road remained in the possession of the government until August 27, 1865—five months—when it was relinquished by the Army, and the company resumed possession. That portion of the road north of Goldsboro' was not used for military purposes.

NORTH CAROLINA RAILROAD.

On the 10th of April, 1865, the work of reconstructing the North Carolina Railroad was commenced at Goldsboro'. On the 19th of April, the repairs were completed to Raleigh, forty-nine miles, and trains commenced running. During the negotiations for the surrender of General Johnston, trains were run to Durham's Station, twenty-six miles beyond Raleigh, and after his surrender, to Hillsboro', eighty-nine miles from Goldsboro', to which point it was used during the time required to parole General Johnston's army.

The principal business done over it during this time was carrying subsistence stores to the enemy who had just surrendered.

That portion of the road west of Raleigh was relinquished to the company immediately after the dispersion of General Johnston's army, but the portion between Goldsboro' and Raleigh, 49 miles in length, was held and operated by the government until October 22, 1865, when it was also turned over to the company. (Final report of Colonel W. W. Wright, April 24, 1866.)

The roads were under the control of the Bureau of Military Railroads during the period referred to. The records of that bureau have been searched, but nothing can be found showing what rates of fares and freight were established. The Quartermaster-General is, therefore, unable to furnish the information on that point called for by the resolution.

An examination of the money accounts of officers stationed in North Carolina shows that $171,129.48 was received during the months of May to October, inclusive, from transportation of passengers and freight, other than Government transportation, upon the Atlantic and North Carolina Railroad, the Raleigh and Gaston Railroad, the Wilmington and Weldon Railroad, and the North Carolina Railroad, but the records filed in this office do not enable me to determine the share of the above sum received on account of each or any of the roads separately.

In addition thereto, one officer reports having received $9,860.75 for transportation on boats and railroads, but does not state the amount received on account of each separately.

The Senate resolution is herewith returned.

Very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster-General, Brevet Major-General, U. S. A.

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45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 100.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In answer to a Senate resolution of May 27, 1878, a report of the Secretary of State in relation to the selection of M. Maurice Delfosse as a commissioner under the Treaty of Washington on the Fisheries question.

JUNE 17, 1878.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

To the Senate:

In answer to the resolution of the Senate of the 27th of May, ultimo, I herewith transmit a report from the Secretary of State, with accompanying documents.

R. B. HAYES.

WASHINGTON, *June* 17, 1878.

DEPARTMENT OF STATE,
Washington, June 17, 1878.

The Secretary of State, to whom was referred the resolution of the Senate of the 27th of May, 1878, requesting the President to communicate to the Senate, "if not in his judgment incompatible with the public interest * * * copies of all correspondence not heretofore submitted, and of all memoranda and minutes in the possession of the government relating to the selection of M. Maurice Delfosse as one of the commissioners under the Treaty of Washington on the Fisheries question," has the honor to lay before the President for communication to the Senate the correspondence enumerated in the subjoined list.

Respectfully submitted.

WM. M. EVARTS.

The PRESIDENT.

List of papers.

No. 1.—Mr. Watson to Mr. Fish, Washington, July 17, 1874.
No. 2.—Mr. Fish to General Schenck, July 23, 1874.
No. 3.—Draught of note proposed to be addressed to Count Andrassy by the British representative at Vienna. Received from Sir Edward Thornton, May 25, 1876.

No. 4.—Mr. Fish to Mr. Pierrepont, June 19, 1876.
No. 5.—Memorandum of receipt from Sir Edward Thornton, February 8, 1877, of a draught of an identic note similar to that submitted May 25, 1876.
No. 6.—Mr. Fish to Mr. Beale, February 9, 1877 (with an inclosure).
No. 7.—Mr. Fish to Mr. Delfosse, February 13, 1877.
No. 8.—Mr. Fish to Mr. Pierrepont, February 13, 1877.
No. 9.—Mr. Delaplaine to Mr. Fish, Vienna, February 26, 1877.
No. 10.—Mr. Delaplaine to Mr. Fish (telegram), Vienna, February 28, 1877.
No. 11.—Mr. Fish to Mr. Pierrepont (telegram), February 28, 1877.
No. 12.—Mr. Pierrepont to Mr. Fish (telegram), London, February 28, 1877.
No. 13.—Mr. Delaplaine to Mr. Fish (telegram), Vienna, March 1, 1877.
No. 14.—Mr. Delaplaine to Mr. Fish, Vienna, March 1, 1877 (with an inclosure).
No. 15.—Mr. Pierrepont to Mr. Fish (telegram), London, March 2, 1877.
No. 16 —Mr. Fish to Mr. Delfosse (unofficial), March 2, 1877.
No. 17.—Mr. Delfosse to Mr. Fish, March 3, 1877.
No. 18.—Mr. Pierrepont to Mr. Fish, London, March 6, 1877 (with an inclosure).
No. 19.—Mr. Evarts to Mr. Delfosse, March 20, 1877.
No. 20.—Mr. Delfosse to Mr. Evarts, March 21, 1877.
No. 21.—Mr. Evarts to Mr. Delaplaine, March 23, 1877.
No. 22.—Mr. Delfosse to Mr. Evarts, May 23, 1878.
No. 23.—Mr. Evarts to Mr. Delfosse, June 3, 1878.

No. 1.

Mr. Watson to Mr. Fish.

WASHINGTON, *July* 17, 1874.

SIR: In obedience to an instruction which has been conveyed to me by Her Majesty's principal secretary of state for foreign affairs, I have the honor to state to you that on the understanding that the draught reciprocity treaty for the reciprocal regulation of the commerce and trade between the United States and Canada, as agreed to by you, will be considered by the Senate in December next. Her Majesty's Government will await the final result of the consideration which the treaty may then receive in the Senate, before taking any fresh steps with regard to the Fisheries Commission. I am further directed by the Earl of Derby to add that Her Majesty's Government wish it to be clearly understood that their right to revert to the provisions of the Treaty of Washington for the appointment of the Fisheries Commission is in no way prejudiced by the delay that has occurred, or that may occur, in consequence of the proceedings with reference to the reciprocity treaty.

I have the honor, &c.,

R. G. WATSON.

No. 2.

Mr. Fish to General Schenck.

No. 586.] DEPARTMENT OF STATE,
Washington, July 23, 1874.

SIR: I inclose herewith, for your information, a copy of a note of the 17th instant, from Mr. R. G. Watson, Her Britannic Majesty's chargé d'affaires in this city, and of my reply thereto of the 18th instant, in relation to the Fisheries Commission.

I am, &c.,

HAMILTON FISH.

No. 3.

[Received from Sir Edward Thornton, May 25, 1876.]

Draught of note proposed to be addressed to Count Andrassy by the British representative at Vienna.

M. le MINISTRE: Articles XVIII, XIX, and XXI of the Treaty of Washington of the 8th of May, 1871, of which I have the honor herewith to inclose a copy, provide for certain privileges in respect to fisheries, and remissions of customs-duties to be granted by Great Britain and the United States respectively; and in the twenty-second and twenty-third articles of the treaty it is further provided that—

"Inasmuch, &c.

"XXIII. The commissioners," &c.

The period of three months specified in the article above quoted having elapsed, it has become necessary to take steps for the appointment of the third commissioner, in accordance with its provisions; and with this view I have received the instructions of Her Majesty's Government to request you to invite His Imperial and Royal Majesty to be graciously pleased to instruct his ambassador at London to undertake the duty of selecting some gentleman properly qualified to act in the capacity of third commissioner.

In consideration of the fact that the proceedings at the Halifax commission will be conducted in the English language, it appears to Her Majesty's Government to be a necessary qualification that the third commissioner should possess an accurate knowledge of that language.

The commissioner appointed by Her Britannic Majesty is Sir Alexander T. Galt, jr., and the commissioner appointed by the President is the honorable Ensign H. Kellogg, of Massachusetts.

The arrangements for the constitution of the commission being otherwise complete, I have the honor to suggest that it would be desirable that the third commissioner should be named by the representative at London of His Imperial and Royal Majesty as soon as may be convenient.

I have further the honor to inform you that my United States colleague has received instructions to act conjointly with me in making this request; and he will address to you a note in similar terms to that which I have now the honor to present.

No. 4.

Mr. Fish to Mr. Pierrepont.

No. 4.] DEPARTMENT OF STATE,
Washington, June 19, 1876.

SIR: Among the matters which may occupy your attention as the representative of the United States in London, will be certain questions still outstanding and undisposed of, arising under the Treaty of Washington, and among them that relating to the Fisheries Convention, provided by articles XXII and XXIII of the treaty.

On referring to the treaty you will find that the British Government having asserted that the privileges accorded by Great Britain under Article XVIII of the treaty were of greater value than those accorded by the United States under Articles XIX and XXI, and this assertion not having been acquiesced in by the United States, it was provided that commissioners should be appointed to determine what compensation, if any, should be paid by the Government of the United States to that of Great Britain for the privileges accorded under Article XVIII of the treaty. Article XXIII provided that the commissioners referred to should be appointed, one by the President, one by Her Britannic Majesty, and the third by the President and Her Britannic Majesty conjointly; and it was further agreed that "in case the third commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third commissioner shall be named by the representative at London of His Majesty the Emperor of Austria and King of Hungary." By Article XXXIII it was provided that Articles XVIII to XXV, inclusive, should take effect as soon as the laws required to carry them into operation should have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada and the Legislature of Prince Edward Island on the one hand, and by the Congress of the United States on the other. Such necessary legislation not being obtained until some time afterward, the date at which these articles of the treaty were to go into effect was fixed as of July 1, 1873, by a protocol of June 7, 1873, a copy of which, with a copy of the proclamation of the President of July 1, 1873, is herewith inclosed.

For some time prior to the date at which these articles thus became effective, the British minister at this capital had been notified of the desire of this government to agree upon a third commissioner, pursuant to the provisions of the treaty, and had been informed that if Her Majesty's Government would suggest names, this government would consider them with a desire to reach an agreement; but up to the 1st July, 1873, when the article went into effect, no effective steps had been taken in that direction. Upon the 7th July, a formal communication was made to the British minister, and several names suggested on the part of the United States; and after that date, and within the three months provided for in the treaty, various efforts were made, from time to time, to reach an agreement, as will be seen by a copy of the correspondence upon the question which is herewith inclosed.

During all this time the British Government had proposed for the position but a single name, whose appointment that government had previously been informed would not be acceptable to the United States.

At the expiration of the three months, in fact, before the three months had expired, the British minister substantially informed me that Canada having been consulted, it was deemed preferable to resort to the alter-

native "provided by the treaty; namely, to leave the nomination to the Austrian ambassador at London."

After the expiration of the three months renewed efforts were made by the United States to reach an appointment by agreement, without success, the Government of Great Britain assuming the ground that, under the treaty, the appointment had devolved upon the Austrian ambassador at London, and declining to take any further steps to reach an agreement.

Soon after this time the question of a reciprocity treaty between the United States and Canada arose, and in the month of July, 1874, a project for such treaty having been submitted to this government, the Government of Great Britain expressed a desire to await the result of this attempted negotiation, which, if successful, would have done away with the proposed commission; and such continued to be the condition of the matter until the British minister, by a note of April 21, 1875, suggested that, as the Senate had failed to approve the project for a reciprocity treaty, steps should be taken to agree upon an identic note, to be addressed to the Austrian Government, requesting that the Austrian ambassador at London might be authorized to proceed to the nomination of a third commissioner.

By a further note of July 19, 1875, Sir Edward Thornton informed this government of the persons who had been appointed on its part as commissioner and agent under the treaty, and was informed in reply, that owing to the absence of the person whom it was intended to appoint as commissioner on the part of the United States, no reply could then be sent communicating the names of the persons appointed on the part of the United States.

Under date of May 8, 1876, the British minister was in like manner informed of the persons appointed on the commission on the part of the United States, and some reference was therein made to the general questions concerning this commission and the delay which has occurred. To this note of the 8th May, no reply has been received.

You will perceive that this government, although of opinion that the terms and spirit of the treaty called for a real and *bona fide* effort on the part of the two governments to appoint a third commissioner, before any recourse should be had to the Austrian ambassador at London, and although of opinion that this effort has not been made on the part of Great Britain, at the same time has informed Her Majesty's Government that it is not the intention of the United States to decline to proceed with the business of the commission on that ground; but has called attention to the fact that no steps have been taken, as provided by Article VI of the Treaty of Washington, to bring the three rules therein mentioned to the knowledge of the other maritime powers, and to invite them to accede thereto, and has suggested that this matter—the only other remaining question under this treaty—should be disposed of at the same time. The matter remains in this position.

I have deemed it proper to go into this explanation, and to furnish you with a copy of all the correspondence that has taken place between the department and the British legation upon the question, and with a short summary of interviews which have taken place at various times between the British minister and myself, that you may be accurately informed of all that has taken place, and by an examination be fully prepared upon the question.

Should the Austrian ambassador at London be requested to proceed with the nomination of a third commissioner, as provided for by Article

XXIII of the treaty, I shall keep you fully advised of any proceedings to that end.

I transmit herewith for easy reference a copy of all the correspondence that has taken place on this question, although much of it from time to time has been transmitted to the legation at London, and of a summary of the interviews to which I have referred. You will understand that this summary contains the substance of notes of interviews with the British minister, kept in aid of my own memory, and not submitted to his inspection, and only transmitted that you may be fully informed.

I am, &c.,

HAMILTON FISH.

NOTE.—For inclosures to the foregoing dispatch see Senate Executive Document No. 44, Forty-fifth Congress, second session, transmitted to the Senate March 21, 1878.

No. 5.

NOTE.—On the 8th of February, 1877, Mr. Fish received from the British minister a draught of an identic note to be addressed to the Austrian minister for foreign affairs. This draught is the same as the one previously submitted May 25, 1876. (See Document No. 3.)

No. 6.

Mr. Fish to Mr. Beale.

No. 21.] DEPARTMENT OF STATE,
Washington, February 9, 1877.

SIR: By Articles XVIII to XXI of the Treaty of Washington, of May 8, 1871, two copies of which are herewith inclosed, certain privileges with reference to fisheries on the coasts of the colonies of Great Britain are granted to the United States, and certain similar privileges upon our coasts to Great Britain, in addition to which the freedom from customs-dues on fish and fish-oil in the United States and the British colonies is conceded.

By Article XXII, however, it was agreed that commissioners should be appointed to determine what compensation in their opinion, if any, should be paid by the Government of the United States to Great Britain for privileges so accorded to citizens of the United States, the assertion having been made by Great Britain that the privileges so accorded to the United States were greater than those granted to Great Britain, which assertion is not admitted by this government.

The manner of the appointment of these commissioners was provided by Article XXIII, which also provided for the appointment of a third commissioner, by the joint agreement of the two governments, and that if such commissioners should not have been so appointed within a period of three months from the date at which Article XXIII became effective, that such third commissioner should be named by the representative at London of His Majesty the Emperor of Austria and King of Hungary.

Owing to the necessity of legislation, Articles XVIII to XXV did not

go into effect until July 1, 1873, and owing to various causes, to which I shall not advert, the third commissioner was not agreed on by the two governments within the three months named in Article XXIII.

Other negotiations then intervened, which, it was thought, might entirely do away with the meeting of the commission, and which have delayed the matter so that it has not as yet been organized.

The two governments have made appointments, however, of commissioners, as provided in Article XXIII, and of agents as therein provided, the third commissioner only being required to constitute the tribunal.

I have stated these preliminary facts to inform you generally upon the subject, and I transmit to you herewith the draught of a note* which you will present to the minister for foreign affairs, requesting that the Emperor will be pleased to permit his ambassador at London to undertake the duty which, by Article XXII of the treaty, the two governments have intrusted to him, and to select some person properly qualified to act as such third commissioner.

A note identic in form will be presented to the minister for foreign affairs by Sir Andrew Buchanan, Her Majesty's ambassador at Vienna, and you will arrange with your British colleague for the simultaneous presentation of your respective notes on this subject.

Considerable difficulty has been experienced in the selection of a person as third commissioner under the treaty, and it has finally been agreed between the two governments that the appointment of Mr. Delfosse, the envoy extraordinary and minister plenipotentiary of the King of Belgium at Washington, by the ambassador of Austria in London in that capacity, will be acceptable to the two governments, and that such appointment be requested; but on this question you will not speak officially in any way, as the joint intimation concerning the wishes of the two governments will be conveyed to Count Beust when His Majesty shall have permitted him to act as requested.

As it is hoped to organize the commission during the coming spring or summer, it is desired that no time be lost in submitting the subject and in requesting the requisite permission.

You will inform the department by telegraph as soon as you shall have received the reply of the Emperor or the purport thereof.

I am, &c.,

HAMILTON FISH.

[Inclosure 2 in No. 21.]

Draught of note to minister for foreign affairs.

Mr. MINISTRE: Articles XVIII, XIX, and XXI of the Treaty of Washington, of the 8th of May, 1871, of which I have the honor herewith to inclose a copy, provide for certain privileges in respect to fisheries and remissions of customs duties to be granted by the United States and Great Britain, respectively, and in the twenty-second and twenty-third articles of the Treaty it is further provided that—

"ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this treaty are of greater value than those accorded by Articles XIX and XXI of this treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects

* See also document No. 3.

of Her Britannic Majesty, as stated in Articles XIX and XXI of this treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privleges accorded the citizens of the United States under Article XVIII of this treaty; and that any sum of money which the said commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

"ARTICLE XXIII.

"The commissioners referred to in the preceding article shall be appointed in the following manner, that is to say: One commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third commissioner shall be named by the representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The commissioners so named shall meet in the city of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

"Each of the high contracting parties shall also name one person to attend the commission as its agent, to represent it generally in all matters connected with the commission."

The period of three months specified in the article above quoted having elapsed, it has become necessary to take steps for the appointment of the third commissioner, in accordance with its provisions, and with this view I have received the instructions of my government to request you to invite His Imperial and Royal Majesty to be graciously pleased to instruct his ambassador at London to undertake the duty of selecting some gentleman properly qualified to act in the capacity of third commissioner.

In consideration of the fact that the proceedings at the Halifax commission will be conducted in the English language, and that any evidence, documents, or oral testimony will be, also, in English, it appears to my government to be a necessary qualification that the third commissioner should possess an accurate knowledge of that language.

The commissioner appointed by the President of the United States is the honorable Ensign H. Kellogg, and the commissioner appointed by Her Britannic Majesty is Sir Alexander T. Galt, K. C. B., &c., &c., &c.

The arrangements for the constitution of the commission being otherwise complete, I have the honor to suggest that it would be desirable that the third commissioner should be named by the representative at London of His Imperial and Royal Majesty as soon as may be convenient.

I have further the honor to inform you that my British colleague has received instructions to act conjointly with me in making this request, and he will address to you a note in similar terms to that which I have now the honor to present.

I have, &c.,

No. 7.

Mr. Fish to Mr. Delfosse.

DEPARTMENT OF STATE;
Washington, February 13, 1877.

MY DEAR MR. DELFOSSE: I am very glad that you have kindly consented to assume the position of commissioner under the twenty-third article of the Treaty of Washington. I should have called upon you in company with Sir Edward Thornton to make the request, but for the many matters pressing upon us at this time, when Congress is in ses-

sion; and I knew that he would represent to you my wishes for your assent to our request.

I hope that you will find the duties of the commission neither onerous nor disagreeable.

With my sincere regard, your friend and obedient servant,

HAMILTON FISH.

Mr. MAURICE DELFOSSE, *&c., &c., &c.*

No. 8.

Mr. Fish to Mr. Pierrepont.

No. 102.] DEPARTMENT OF STATE,
Washington, February 13, 1877.

SIR: You are familiar with the general subject of the Fisheries Commission to be organized at Halifax under articles 18 to 23 of the Treaty of Washington, and with the difficulties which have been experienced in agreeing upon a third commissioner under the provisions of article 23. Of this matter I treated at length in my No. 4 of the 19th June, 1876, and you have also been furnished with copies of some correspondence upon the same question which has since occurred with the British minister at this capital. On one or two recent occasions, in interviews between Sir Edward Thornton and myself, the subject of providing for the organization of this commission before the term of the President should expire has been adverted to, and, upon February 1, after some conversation, I informed Sir Edward that if his government should propose the appointment of Mr. Delfosse, the envoy extraordinary and minister plenipotentiary of the King of the Belgians at Washington, this government would not object to such selection. Sir Edward thereupon communicated with his government, and upon the 9th of February informed me that he had received instructions favoring the appointment of Mr. Delfosse, and I thereupon informed him that it would be acceptable to this government.

It was understood that the manner in which this was to be reached was by a suggestion to the Austrian ambassador in London, with whom under the 23d article the appointment rests.

Sir Edward thereupon, with my assent, called upon Mr. Delfosse, and afterward informed me that he had consented to serve in that capacity; and upon the same day, February 9, an instruction was addressed to Mr. Beale at Vienna, directing him to forthwith address the minister of foreign affairs a note in a form which was inclosed, requesting permission for the representative at London of His Imperial and Royal Highness the Emperor of Austria and King of Hungary to make the appointment of third commissioner, as provided in article 23 of the treaty. A copy of this instruction to Mr. Beale, and of the identic note agreed upon between Sir Edward Thornton and myself, to be addressed by Mr. Beale and by Sir Andrew Buchanan, Her Majesty's ambassador at Vienna, is herewith inclosed.

Mr. Beale, as you will perceive, has been instructed to notify the department by telegraph, as soon as he shall receive the reply of the minister for foreign affairs.

You will, therefore, without delay call upon Lord Derby and inform him of the general facts which have been communicated to you, without reading or leaving a copy of this instruction, and will state that you are instructed to request his views, and to co-operate with him in procuring

the appointment of Mr. Delfosse by the Austrian ambassador, as has been agreed upon between Sir Edward Thornton and myself.

I inclose a draught of a form of an identic note* intended to be addressed to Count Beust by yourself and by Lord Derby, on behalf of Her Majesty, when permission shall have been accorded to him to act. You will consult Lord Derby on this point, and should he, for any reason, desire to make any change in the form of the note, without altering its purport, you are authorized to accede to such change as may be formal and which does not change its effect. You will also agree with Lord Derby in the manner in which the intimation is to be conveyed to Count Beust, with reference to the appointment of Mr. Delfosse, and, at the time of the delivery of the note on your part, or prior thereto, you will satisfy yourself that the matter is understood and that the desired appointment will be made.

It is desired that, by conference with Lord Derby, you may be in condition, in conjunction with him, to address Count Beust the moment that information is conveyed to you by telegraph from Washington that permission has been accorded to the ambassador of Austro-Hungary to act, and, as the instruction to Mr. Beale is already some days on its way, you will make arrangements to that end without loss of time.

As soon as Mr. Beale shall notify the department of the result of his application, you shall be informed by telegraph, and you will also inform the department of what has been done by you at the earliest moment that anything decisive has been accomplished.

It may be that the matter cannot be closed and a result ascertained before the 4th of March, but it would be gratifying if a final disposition could be made before that time.

I am, &c.,

HAMILTON FISH.

No. 9.

Mr. Delaplaine to Mr. Fish.

No. 39.] LEGATION OF THE UNITED STATES,
Vienna, February 26, 1877. (Received March 16.)

SIR: I received on the 24th instant your No. 21, and without delay I advised Sir Andrew Buchanan of the arrival of your instructions in the matter therein referred to, he having some days previously intimated at the legation his anticipation of their coming. He engaged to arrange at the foreign office for an early interview with Count Andrassy, and he afterward communicated to me that it would take place to-day at noon.

At the interview I presented to his excellency a copy of the Treaty of Washington, of May 8, 1871, together with a note drawn in accordance with the form inclosed in your dispatch, and almost identical with the note which was presented by the British ambassador.

The count, in reply, expressed his conviction that His Majesty would with pleasure direct his ambassador at London to act in compliance with the joint desire of the two governments and name a third commissioner, and that in such event he would transmit by telegraph the requisite instructions to Count Beust.

I have, &c.,

J. F. DELAPLAINE.

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*See documents Nos. 3 and 6.

No. 10.

Mr. Delaplaine to Mr. Fish.

[Telegram.]

VIENNA, *February* 28, 1877.

FISH, *State Department, Washington:*

Presented, twenty-sixth instant, note asking authorization of Count Beust for choice third commissioner. Andrassy expressed conviction Emperor's permission being granted; to-day verbally informed me that instructions have been sent Beust per telegraph.

DELAPLAINE.

No. 11.

Mr. Fish to Mr. Pierrepont.

[Telegram.]

WASHINGTON, *February* 28, 1877.

PIERRPONT, *Minister, London:*

Secretary of legation, Vienna, telegraphs presentation on twenty-sixth of note mentioned in my hundred two, and that he is informed verbally instructions been sent to Austrian minister, London, by telegraph.

If permission has been granted ambassador to act, proceed according to instructions in hundred two; endeavor to have appointment made this week.

FISH,
Secretary.

No. 12.

Mr. Pierrepont to Mr. Fish.

[Telegram.]

LONDON, *February* 28, 1877.

FISH, *Secretary, Washington:*

Have seen Lord Derby about fisheries. He agrees to every point. I wait cable.

PIERREPONT, *Minister.*

No. 13.

Mr. Delaplaine to Mr. Fish.

[Telegram.]

VIENNA, *March* 1, 1877.

FISH, *State Department, Washington:*

Received to-day Andrassy note confirming my yesterday's telegram. Further, Beust charged, after choice made, to advise foreign office, London, and United States envoy there.

DELAPLAINE.

No. 14.

Mr. Delaplaine to Mr. Fish.

No. 41.] LEGATION OF THE UNITED STATES,
Vienna, March 1, 1877.

SIR: Referring to my Nos. 39 and 40, I beg to advise my receipt this morning of a note from his excellency Count Andrassy, wherein I am informed that His Imperial and Royal Majesty has graciously been pleased to consent that his ambassador in London should undertake the duty of selecting a gentleman to act as third commissioner under the twenty-third article of the Treaty of Washington 8th of May, 1871, and that Count Beust has been accordingly instructed by his excellency the imperial and royal minister of foreign affairs.

His Imperial and Royal Majesty's ambassador has been further instructed, after having made the selection, to communicate, forthwith, the same to the foreign office in London, and to the representative of the United States at that court.

Upon receipt of the note I transmitted to you a telegram in the following words:

FISH, *State Department, Washington:*

Received to-day Andrassy's note confirming my yesterday's telegram. Further, Beust charged, after choice made, to advise foreign office, London, and United States envoy there.

DELAPLAINE.

I herewith append a copy of my note to Count Andrassy and his excellency's reply, together with translation.

I have, &c.,

J. F. DELAPLAINE.

[Inclosure 2 in No. 41.—Translation.]

Count Andrassy to Mr. Delaplaine.

The undersigned, minister of the imperial house and for foreign affairs, has had the honor to receive the esteemed note of the 26th instant, in which the chargé d'affaires of the United States of America, Mr. Delaplaine, was pleased, under the instructions of his government, to express the request that the imperial and royal ambassador in London of His Majesty the Emperor and King should be authorized, in the sense of Article XXIII of the treaty concluded at Washington, on the 8th of May, 1871, between Great Britain and the United States of America, to indicate the third commissioner for the negotiation of the differences pending between these two states in the fisheries question.

In response to this note the undersigned begs respectfully to inform the chargé d'affaires that he has represented the matter to His Majesty, and after having obtained His Majesty's authorization he has invited the imperial and royal ambassador in London to undertake the nomination of the third commissioner in accordance with the enactment of the said article.

At the same time Count Beust has been requested to communicate forthwith the selection made by him to the foreign office in London, and to the representative of the Government of the United States at that place.

The undersigned avails himself of this occasion to renew to the chargé d'affaires the assurance of his distinguished consideration.

Vienna, February 28, 1877.

ANDRASSY.

Mr. DELAPLAINE,
Chargé d'Affaires of the United States of America.

No. 15.

Mr. Pierrepont to Mr. Fish.

[Telegram.]

LONDON, *March* 2, 1877.

FISH, *Secretary, Washington:*

Austrian ambassador appointed Delfosse to-day.

PIERREPONT.

No. 16.

Mr. Fish to Mr. Delfosse.

[Unofficial.]

DEPARTMENT OF STATE,
Washington, March 2, 1877.

MY DEAR Mr. DELFOSSE: A telegram from London has just been received, conveying the intelligence of your appointment as a commissioner under Articles XVIII to XXIII of the Treaty of Washington of May 8, 1871.

Pray accept my warmest congratulations, and believe me, my dear sir,

Very truly, yours,

HAMILTON FISH.

Mr. MAURICE DELFOSSE,
&c., &c., &c.

No. 17.

Mr. Delfosse to Mr. Fish.

BELGIAN LEGATION,
Washington, March 3, 1877.

MY DEAR M. FISH: Many thanks for your kind note of yesterday, and the information conveyed.

I have received, last night, a telegram from my government, authorizing me to accept the appointment of commissioner under the "Fisheries Arbiter" of the Treaty of Washington.

Believe me, my dear M. Fish, yours, very truly,

MAURICE DELFOSSE.

No. 18.

Mr. Pierrepont to Mr. Fish.

No. 136.] LEGATION OF THE UNITED STATES,
London, March 6, 1877. (Received March 19.)

SIR: Referring to your dispatch, No. 102, of the 13th ultimo, I have the honor to say that, on the 28th of February last, I had a formal in-

terview with Lord Derby, and we agreed to send an identic note to the Austrian ambassador, if we could agree upon the terms of the note.

On the 1st of March, we again met at the foreign office and agreed upon the note in the very language of your draught sent in your instruction No. 102. The two identic notes were sent to the Austrian ambassador on that day, and his reply was received by me on the 2d of March instant, a copy of which reply is herewith inclosed. By this you will see that Mr. Delfosse, envoy extraordinary and minister plenipotentiary of His Majesty the King of the Belgians at Washington, has been named as the third commissioner, of which fact I advised you by cable on the 2d instant.

I have, &c.,

EDWARDS PIERREPONT.

Hon. HAMILTON FISH,
Secretary of State, Washington, D. C.

Count von Beust to Mr. Pierrepont.

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN EMBASSY,
Belgrave Square, March 2, 1877.

MONSIEUR LE MINISTRE: I have the honor, in reply to your note of 1st of March, to inform your excellency that in conformity with Article XXIII of the Treaty of Washington of the 8th of May, 1871, I have named Mr. Delfosse, envoy extraordinary and minister plenipotentiary of His Majesty the King of the Belgians at Washington, third commissioner.

I have equally the honor to inform your excellency that due notice has been given of the above nomination to the Government of Her Majesty the Queen, and to the Belgian legation at London.

I have the honor to be, with the highest consideration, Monsieur le Ministre, your excellency's most obedient servant,

BEUST.

His Excellency the Hon. EDWARDS PIERREPONT,
United States Minister, &c., &c., &., 17 *Cavendish Square.*

No. 19.

Mr. Evarts to Mr. Delfosse.

DEPARTMENT OF STATE,
Washington, March 20, 1877.

SIR: Referring to the matter of the appointment of a third commissioner in conformity with Article XXIII of the Treaty of Washington of the 8th May, 1871, concerning which my predecessor has heretofore communicated with you, I have now the honor to inform you that the representative of the United States at London, in a dispatch bearing date March 6, has informed me that upon the 1st March a form of identic note to be addressed to the Austrian ambassador in London was agreed upon between himself and Lord Derby, requesting his excellency Count Beust to proceed in accordance with the treaty to appoint the third commissioner, and that in accordance therewith his excellency has been pleased to name you as the third commissioner under the treaty.

Mr. Pierrepont also incloses a copy of a note addressed to him by Count Beust to this effect, bearing date March 2, of which I have the honor herewith to inclose you a copy for your information.

I have great pleasure in assuring you of the satisfaction with which this government has learned of your nomination in that capacity, and have the honor to be, sir,

Your obedient servant,

WM. M. EVARTS.

Mr. MAURICE DELFOSSE, *&c., &c., &c.*

No. 20.

Mr. Delfosse to Mr. Evarts.

[Translation.]

LEGATION OF BELGIUM,
Washington, March 21, 1877.

MR. SECRETARY OF STATE: I have the honor to acknowledge the receipt of the note which you were pleased to address me, with inclosure, under date of yesterday, informing me that the ambassador of Austria-Hungary in England had designated me, according to the stipulations of Article XXIII of the Treaty of Washington of May 8, 1871, as third commissioner appointed for the settlement of the questions connected with the fisheries.

Thanking you for what you had the kindness to add in relation to myself, personally, in this communication,

I have, &c.,

MAURICE DELFOSSE.

No. 21.

Mr. Evarts to Mr. Delaplaine.

No. 27.] DEPARTMENT OF STATE,
Washington, March 23, 1877.

SIR: Your dispatch No. 41, of the 1st instant, inclosing a copy of your correspondence with Count Andrassy, respecting the selection by Count Beust of a third commissioner under Article XXIII of the Treaty of Washington, has been received.

I have to state for your information that soon after my predecessor's instruction No. 21 to Mr. Beale, an instruction was addressed to the minister at London, directing him to make arrangements with Her Majesty's secretary of state for foreign affairs for the presentation of identic notes to Count Beust respecting the selection of a third commissioner, as soon as that ambassador should be authorized by his government to act in the matter.

On the 28th ultimo, the purport of your telegram of that date, containing the information that the necessary instructions had been sent to Count Beust, was communicated to Mr. Pierrepont, and he was at the same time directed to proceed according to his previous instructions.

On the 2d instant Mr. Pierrepont telegraphed that the Austrian ambassador had appointed Mr. Delfosse as the third commissioner, and subsequently transmitted the correspondence which had passed upon the subject. The department formally advised Mr. Delfosse of his appointment upon the 20th instant.

I am, &c.,

WM. M. EVARTS.

No. 22.

Mr. Delfosse to Mr. Evarts.

BELGIAN LEGATION, *May* 23, 1878.

Mr. SECRETARY OF STATE: On a motion made in the Senate, the Government of the United States has published (Ex. Doc. No. 44) certain official dispatches concerning my appointment as third commissioner in the Halifax arbitration.

These dispatches make known certain objections which were raised several years since by the Government of the United States to my appointment (which objections I think proper here to declare had never been revealed to me, and were absolutely unknown to me previously to that publication), and subsequently my appointment in 1877, notwithstanding those objections.

The official communication of these few dispatches does not reveal the fact that it was at the express request of the two parties interested, the Government of the United States and that of Great Britain, that I accepted the office of third commissioner, which they had both tendered me, and for which the minister of Austria-Hungary designated me *afterward*, likewise at their request, in order that this appointment might be made in entire conformity with the letter of the Washington Treaty (article 23).

These facts are proved by the letter which was addressed to me, February 13, 1877, by Mr. H. Fish, Secretary of State (a copy of which is inclosed), containing the expression of his desire, together with that of the minister of England, that I should assume the office of third commissioner; by the communication of the minister of Austria-Hungary, Count von Beust, notifying the Belgian Government (March 1, 1877) of my appointment, and by the letter of Mr. H. Fish, also inclosed, informing me, March 2, 1877, that he had received a telegram from London announcing that I had been appointed the day before by Count von Beust.

The draughts of Mr. Fish's letters are doubtless among the archives of the Department of State; at all events, I hold the originals of these various communications at your disposal.

The Government of the United States, however, having seen fit to comply with this call, this incomplete publication, and the comments made on it in Congress, have placed and left the circumstances of my appointment, as regards public opinion, in a false light, and have given rise to erroneous and unjust impressions, against which I owe it to myself to make this protest.

The Government of the King has been particularly sensible to charges which affect it as well as its representative. I do not doubt, Mr. Secretary of State, that it will be sufficient to call (in accordance with its instructions) your attention to these facts, without any further appeal to your sense of justice and your well-known love of truth, to lead you, regretting the injury which they have done us, to feel a desire to modify, by such means of official publicity as may be at your command, the damaging effect of this publication of incomplete documents, and thus to establish and recognize the correctness of the facts which I have stated above, and which led me, notwithstanding my reluctance and the personal inconvenience to which it subjected me, to take part in this arbitration, with the sole desire thenceforward to render conscientiously to two governments, friendly to my country, the service which they both asked of me.

Accept, Mr. Secretary, the assurance of my high consideration.

MAURICE DELFOSSE.

No. 23.

Mr. Evarts to Mr. Delfosse.

DEPARTMENT OF STATE,
Washington, June 3, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 23d ultimo, in reference to the publication of certain official dispatches concerning your appointment as third commissioner in the Halifax arbitration, and I learn with regret that the Government of the King of Belgium thinks that the documents which have been published give but incomplete or partial understanding of the facts and circumstances of the appointment.

Fortunately, whatever misapprehensions may have arisen on this score can be easily corrected by the further publication of such parts of the correspondence as may present a complete view of the subject. The department will take pleasure, therefore, in transmitting to Congress such documents upon the subject, not already given to the public, as may be pertinent.

Accept, sir, a renewed assurance of my high consideration.

WM. M. EVARTS.

BSB Bayerische StaatsBibliothek
MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

Senate documents

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